

CLAIM OF CHARLES EWING AGAINST THE OSAGE INDIAN NATION.

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L E T T E R

FROM

THE SECRETARY OF THE TREASURY,

IN RESPONSE TO

*A resolution of the House of Representatives, transmitting the papers in the claim of Charles Ewing against the Osage Indian Nation.*

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FEBRUARY 14, 1882.—Referred to the Committee on Indian Affairs, and ordered to be printed.

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TREASURY DEPARTMENT,  
February 11, 1882.

SIR: In compliance with the resolution of the House of January 30, 1882, "That the Secretary of the Treasury is hereby directed to furnish this House copies of all the papers, accounts, contracts, agreements, arguments of counsel, opinions of the Commissioners of Indian Affairs, Secretaries of the Interior, Auditors and Comptrollers of the Treasury relating to or concerning the claim of one Charles Ewing against the Osage Indian Nation, and also the amounts and dates of any payments made thereon," I have the honor to transmit herewith copies of all the papers referred to.

Very respectfully,

CHAS. J. FOLGER,  
*Secretary.*

Hon. J. WARREN KEIFER,  
*Speaker of the House of Representatives.*

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CLAIM OF CHARLES EWING AGAINST THE OSAGE INDIAN NATION.

*List of papers, &c., furnished by the Second Auditor, in accordance with the request of the honorable Secretary of the Treasury, under the resolution adopted by the House of Representatives January 30, 1882.*

[House resolution.]

*Resolved,* That the Secretary of the Treasury is hereby directed to furnish the House copies of all the papers, accounts, contracts, agreements, arguments of counsel, opinions of the Commissioners of Indian Affairs, Secretaries of the Interior, Auditors and Comptrollers of the Treasury relating to or concerning the claim of one Charles Ewing against the Osage Indian Nation, and also the amounts and dates of any payments made thereon.

## CLAIM No. 1.—(\$59,452.60.)

1. Power of attorney to Charles Ewing.
2. Resolution of Osage council.
3. Contract or agreement between certain Osage Indians and Charles Ewing.
4. Account in favor of Charles Ewing for \$59,452.60, stated in Office of Indian Affairs.
5. Letter of Second Auditor to Commissioner of Indian Affairs, July 1, 1880.
6. Reply of Commissioner, July 1, 1880.
7. Second Auditor to Second Comptroller, July 2, 1880.
8. Second Comptroller to Commissioner of Indian Affairs, July 3, 1880.
9. Reply of Commissioner, July 6, 1880.
10. Further reply of Commissioner, July 7, 1880.
11. Account of Charles Ewing for \$59,452.60, rendered by himself and approved by Commissioner of Indian Affairs and Secretary of the Interior.
12. Affidavit of Charles Ewing in support of his account, July 1, 1880.
13. Argument of Charles Ewing, addressed to Second Comptroller, July 3, 1880.
14. Second Comptroller to Second Auditor, July 7, 1880.
15. Second Auditor to Second Comptroller, July 9, 1880.
16. Argument of W. A. Phillips, July 9, 1880.
17. Argument of Charles Ewing, July 10, 1880.
18. Affidavit of Charles Ewing, July 12, 1880.
19. Additional argument of W. A. Phillips.
20. Second Comptroller to Second Auditor, July 13, 1880.
21. Second Auditor to Second Comptroller, July 16, 1880.
22. Certificate of Second Auditor that nothing is due Charles Ewing.
23. Certificate of Second Comptroller that the sum of \$59,452.60 is due Charles Ewing.

NOTE.—The above mentioned sum of \$59,452.60 was paid to Charles Ewing July 17, 1880.

## CLAIM No. 2.—(\$17,706.29.)

24. Secretary of Interior to Commissioner of Indian Affairs, May 23, 1881, inclosing sworn statement of Charles Ewing.
25. Reply of Commissioner, giving reasons for not stating an account in Ewing's favor, May 26, 1881.
26. Secretary of Interior to Commissioner of Indian Affairs, July 11, 1881, directing an account to be stated.
27. Sworn statement of Charles Ewing, May 18, 1881, indorsed by Commissioner of Indian Affairs September 5, 1881, and by Secretary of Interior September 12, 1881.
28. Account in favor of Charles Ewing for \$17,706.29 stated in Indian Office, September 7, 1881.
29. Second Auditor to Second Comptroller, October 5, 1881.
30. Statement of bookkeeper, Second Auditor's Office, September 27, 1881.
31. Argument of W. A. Phillips addressed to Second Comptroller. (No date.)
32. Memorandum of Charles Ewing. (No date.)
33. Charles Ewing to Second Comptroller, October 18 and 20, 1881. (Three letters and telegram.)
34. Second Comptroller to Second Auditor, October 21, 1881.
35. Certificate of Second Auditor that nothing is due Charles Ewing, October 5, 1881; and of Second Comptroller, that a balance of \$12,449.08 is due, October 19, 1881.
36. Acting First Comptroller to Secretary of the Treasury, suggesting that the account be returned to the Second Comptroller for reconsideration, October 29, 1881.
37. Second Comptroller to Secretary of the Treasury, November 1, 1881, confirming his certificate of October 19, 1881.
38. Decision of the Acting Secretary of the Treasury that a warrant should issue, November 18, 1881.

NOTE.—The sum of \$12,449.08, due Ewing, was disposed of by paying him \$11,587.17, November 3, 1881; and by carrying \$861.91 to his credit on the Second Auditor's books to offset his indebtedness as late captain Thirteenth United States Infantry.

39. Exhibit A.—Papers showing that the contract and power of attorney executed by certain Osage Indians was approved by the Osage council.
40. Exhibit B.—Statement of Commissioner of General Land Office showing number of acres of Osage lands alienated by the United States.
41. Exhibit C.—Statement explaining the disallowance of \$29,657.72 by the accounting officers.
42. Exhibit D.—Account of Charles Ewing for \$59,452.60, as stated by the accounting officers.
43. Exhibit E.—Copy of appropriation warrant for \$236,083.38 due the Osage Indians.

44. Exhibit F.—Letter of W. A. Phillips, May 28, 1873, asking Secretary of Interior for an early settlement of the account between the Cherokees and Osages.
45. Exhibit G.—Account of Charles Ewing for \$17,706.29, as stated by the accounting officers.
46. Exhibit H.—Certificate of Second Comptroller, dated February 9, 1878, that Charles Ewing, late captain Thirteenth United States Infantry, is indebted to the United States in the sum of \$861.91.
47. Appendix.—Correspondence, reports, affidavits, &c., in relation to statements made by certain Osage Indians that Charles Ewing promised to pay them four per cent. for their services.

## No. 1.

Know all men by these presents, that we, Joseph Pawne-no-pash-e, governor of the Great and Little Osage Indians, Black Dog, chief of Black Dog's band, and August Captain, councilor Osage Nation, being the duly authorized delegates of the Osage Nation, and fully empowered hereto by resolution of the Osage national council, a copy of which is hereto attached, and acting for and in behalf of said Great and Little Osage Nation, have made, constituted, and appointed, and by these presents do make, constitute, and appoint Charles Ewing, attorney and counselor at law, of the city of Washington, District of Columbia, the true and lawful attorney for said Great and Little Osage Nation, for it and in its name, place, and stead to enter into negotiations with the proper authorities of the United States for the purpose of securing a just and legal settlement of all the accounts of the Great and Little Osage Nation for and on account of all monies that have been, or should have been, or that may hereafter be, received by the United States on account of all and any of the lands of said nation that may have been, or may hereafter be, transferred by the United States to any parties, and particularly for the adjustment of the following claims made by the said nation, to wit:

1st. The transfer to the interest-bearing credit of the Great and Little Osages in the Treasury of the United States of all the net proceeds of the sales of the lands ceded by said Osages to the United States by the first article of the treaty between the United States and the Great and Little Osage Nation, made on the 29th September, 1865, and proclaimed January 21, 1867.

2d. The payment by the United States for the sixteenth and thirty-sixth sections in each of the townships embraced in the public surveys of Osage lands in the State of Kansas that were granted by the United States to said State for school purposes, with interest thereon at the rate of five (5) per cent. per annum from the date of final survey of each township, until the date of the allowance and payment of this claim.

3d. The payment to the members of the Clermont band of Osages of the money still due them under the 9th article of the treaty of March 2, 1839.

4th. The granting of pensions to the families dependent upon the Osages who were killed by citizens of the United States (known as Kansas militia) in 1873, for which claims are now on file in the Indian Office.

5th. The granting by the United States to the Great and Little Osage Nation of a patent for the lands it now owns in the Indian Territory.

And for the purposes aforesaid we do hereby grant unto the said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as we might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that the said attorney shall lawfully do or cause to be done by virtue hereof, hereby annulling and revoking all former powers of attorney or authorizations whatever in the premises. And whereas our attorney is to receive for compensation for his service herein a certain per cent. or proportion of the amounts he may secure to the Osage Nation of Indians from the United States Government, or the general Indian civilization fund, which amount is stipulated in a contract this day made and executed, it is, therefore, in consideration of the premises, stipulated, that so far as the five claims above enumerated are concerned this power of attorney is absolutely and forever irrevocable.

In witness whereof we have hereunto set our hands and seals this 14th day of February, A. D. 1877.

[SEAL.]

JOSEPH PAW-NE-NO-PASH-E, *Governor.*

[SEAL.]

BLACK + DOG.

[SEAL.]

AUGUSTUS, *Captain Councilor.*

Witnessed by—

R. F. HUNTER.

CHAS. S. LUSK.

Personally appeared before me this 14th day of February, A. D. 1877, at Washington, D. C., Joseph Pawne-no-pashe, governor of the Great and Little Osage Indians, Black Dog, chief of the Black Dog band, and Augustus Captain, councilor, all of the Osage Nation, parties to the foregoing power of attorney, made the 14th day of February, 1877, by them as the delegated and duly empowered authority of their nation. And I hereby certify that said power of attorney was duly signed and executed in my presence by the aforesaid interested parties after the same had been read, explained, and interpreted to them, and that the source and extent of authority claimed is as set forth in said power of attorney for the purposes therein indicated.

In testimony whereof I have hereunto set my hand and affixed the seal of the supreme court of the District of Columbia, the day and year first above written.

D. K. CARTER,  
*Chief Justice.*

DISTRICT OF COLUMBIA, *to wit* :

I, R. J. Meigs, clerk of the supreme court of the District of Columbia, hereby certify that D. K. Carter, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 14th day of February, 1877.

R. J. MEIGS, *Clerk*,  
By L. P. WILLIAMS,  
*Assistant Clerk.*

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No. 2.

*Copy resolution of Osage Council.*

*Be it enacted by the National Council of the Osage Nation*, That Joseph Paw-ne-no-pash-e, Big Chief, Hard Rope, Chetopah, and August Captain be, and they are hereby, constituted and appointed delegates and representatives of the nation to treat with the United States Government for the better protection of our national interests; to secure to us some act of Congress or other measure by which our debts can be paid or adjusted; an annuity payment per capita arranged for; school facilities such as we need and desire provided for all our minor children; ample agricultural implements, and sufficient medical assistance provided for.

In short, said commissioners are fully authorized to represent and treat of all the interests of the nation, and they are hereby fully accredited to the government.

Approved by—

JOSEPH PAW-NE-NO-PASH-E,  
*Governor of Osages.*  
CHETOPAH, his + mark.  
*Chief Councilor.*

THOMAS MOSIER,  
*Secretary pro tem.*

DECEMBER 9, 1876.

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No. 3.

Articles of agreement, made and entered into this 14th day of February, 1877, by and between Joseph Pawne-no-pash-e, governor of the Great and Little Osage Indians; Black Dog, chief of Black Dog's band; and August Captain, councilor Osage Nation, acting as a duly authorized and empowered delegation of the Osage Nation, of the first part, and Charles Ewing, attorney at law, of Washington, D. C., of the second part, witnesseth:

That whereas the said parties of the first part, acting for themselves and for the Great and Little Osage Indians, by virtue of the following act of the Osage National Council, to wit: "Be it enacted by the National Council of the Osage Nation, that Joseph Pawne-no-pash-e, Big Chief, Hard Rope, Chetopah, and August Captain be, and they are hereby, constituted and appointed delegates and representatives of the nation to treat with the United States Government for the better protection of our national interests; to secure to us some act of Congress or other measure by which our debts can be paid or adjusted; an annuity payment per capita arranged for; school facilities such as we need and desire provided for all our minor children; ample agricultural implements, and sufficient medical assistance provided for.

"In short, said commissioners are fully authorized to represent and treat of all the interests of the nation, and they are hereby fully accredited to the government," have

this day constituted and appointed the party of the second part the attorney of the said Osage Nation, in all matters that may be submitted to him by said nation, and particularly have charged the said attorney as follows, to wit:

1st. To review the accounts of the said nation with the United States for and on account of the sale of the Osage lands in the State of Kansas.

2d. To secure the payment from the United States for the sixteenth and thirty-sixth sections in each of the townships embraced in the public surveys of Osage lands in the State of Kansas that were granted by the United States to said State for school purposes, with interest thereon at the rate of five (5) per cent. per annum from the date of final survey of each township until the date of the allowance and payment of this claim.

3d. The payment to the members of the Clermont band of Osages of the money still due them under the 9th article of the treaty of March 2, 1839.

4th. To secure the granting of pensions to the families dependent upon the Osages who were killed by citizens of the United States (known as Kansas militia), in 1873, for which claims are now in file in the Indian Office.

5th. To secure the granting by the United States to the Great and Little Osage Nation of a patent for the lands it now owns in the Indian Territory.

And generally, to do and perform all other things that an attorney may properly do and perform for the period of three years from this date; and whereas the said party of the second part has agreed faithfully and intelligently to perform any and all the duties that may be imposed upon him by reason of the matters herein set forth: Now, therefore, the parties of the first part, acting for and in behalf of the said Great and Little Osage Nation, hereby agree for said nation to pay, or cause to be paid, to said party of the second part, his heirs or assigns, twelve and a half (12½) per cent. of all moneys that said party of the second part may hereafter cause to be paid to said nation, or any band thereof, or of any moneys that he may cause to be passed to the credit of said nation, in the Treasury of the United States, which said monies are now due or should in law or justice be placed to said credit; and for the payment of said per cent. on any and all sums so placed to the said credit, the parties of the first part hereby agree that the Osage National Council will issue a requisition on the Hon. Secretary of the Interior, and do and perform any other act that may be necessary in the premises; and in case the Osage Nation should for three months fail to perform any of the stipulations herein, the Secretary of the Interior is hereby empowered to make full payments under this agreement.

And it is further stated in this agreement that after the appointment of the delegation above named, and before its departure, Chetopah sickened and died, and Strike Axe was appointed to fill his place, but from sickness was unable to accompany the delegation; that Big Chief being sick, Black Dog was appointed to fill his place, and that Hard Rope, being sick, could not accompany the delegation.

In witness whereof we have hereunto subscribed our names and set our seals, at Washington, D. C., the day and year first above written.

[SEAL.]

JOSEPH PAW-NE-NO-PASH-E, Gov.

[SEAL.]

his  
BLACK + DOG.

[SEAL.]

mark.  
AUGUSTUS Captain.  
CHARLES EWING.

Witnessed by—

R. F. HUNTER.  
CHAS. J. LUSK.

Personally appeared before me, this 14th day of February, A. D. 1877, at Washington, D. C., Joseph Paw-ne-no-pash-e, governor of the Great and Little Osage Indians, Black Dog, chief of Black Dog's band, and August Captain, councilor, all of the Osage Nations, parties to the within contract, made the 14th day of February, A. D. 1877, by and between them as the delegated and duly empowered authority of their nation, and Charles Ewing, attorney at law, of Washington, D. C.

And I hereby certify that said contract was duly signed and executed in my presence by the aforesaid interested parties after the same had been read, explained, and interpreted to them; and that the source and extent of authority claimed is as set forth in said contract for the purposes therein indicated.

In testimony whereof I have hereunto set my hand and affixed the seal of the supreme court of the District of Columbia, the day and year first above written.

D. K. CARTER,  
Chief Justice.

DISTRICT OF COLUMBIA, to wit:

I, R. J. Meigs, clerk of the supreme court of the District of Columbia, hereby certify that D. K. Carter, whose genuine signature is subscribed to the foregoing contract

tificate, was, at the time of signing and attesting the same, chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 14th day of February, 1877.

R. J. MEIGS, *Clerk*,  
By L. P. WILLIAMS,  
*Assistant Clerk*.

DEPARTMENT OF THE INTERIOR,  
*Washington, D. C., 9th December, 1879.*

This contract between the Great and Little Osage Indians and Charles Ewing, att'y at law, is hereby approved, except in so far as it relates to the adjustment of the accounts relative to the sale of the Osage ceded lands in Kansas and the moneys arising therefrom to the general civilization fund. The rate of compensation in the within contract to be subject to the approval of the Secretary of the Interior.

E. A. HAYT,  
*Commissioner*.

The action of the Commissioner as above is approved, and the within fee is approved at 7½ per cent.

C. SCHURZ,  
*Secretary*.

DEPT' INTERIOR, 23 Dec., 1879.

NOTE.—The foregoing contract & power of attorney were ratified by the Osage Nation January 12, 1880. (See Exhibit A.)

No. 4.

Date: 1880. June 30.

*The United States to Charles Ewing, Dr.*

To the following amount, being 7½ per cent., fee allowed by the Hon. Secretary of the Interior, under a contract between Joseph Paw ne-no-pash-e, governor of Osages, Black Dog, and August Captain, representing Osage Nation, and Charles Ewing, dated Feb'y 14, 1877, upon the sum of \$792,701.27, to be placed to the credit of the Osage Nation, as per statement of the Commissioner of the General Land Office herewith,\* and in accordance with the act of Congress approved June 16, 1880, entitled "An act to carry into effect the 2d and 16th articles of the treaty between the United States and the Great and Little Osage Indians, proclaimed Jan'y 21, 1867"..... \$59,452 60

OFFICE OF INDIAN AFFAIRS,  
*June 30, 1880.*

I certify that the above account is correct and just, that the same has not been paid, that there is due Charles Ewing the sum of fifty-nine thousand four hundred fifty-two and 100/100 dollars, and that I have certified this account only.

R. E. TROWBRIDGE,  
*Commissioner*.

[Indorsement.]

DEPARTMENT OF THE INTERIOR,  
OFFICE OF INDIAN AFFAIRS.

The within account of Charles Ewing, for fee allowed by the Secretary of the Interior, under his contract with the Osage Nation, dated February 14, 1877, amounting to \$59,452.60, allowed by this office for the sum named, and referred to the Second Auditor of the Treasury for settlement:

Charging appropriation "fulfilling treaty with Osages, proceeds of lands" \$59,452.60.  
Payment to be made to claimant present.

R. E. TROWBRIDGE,  
*Commissioner*.

\* See Exhibits B and C.



No. 5.

TREASURY DEPARTMENT,  
SECOND AUDITOR'S OFFICE,  
July 1, 1880.

SIR: The papers in the claim of Charles Ewing for \$59,742.60, forwarded to me on the 30th ultimo, do not, in my judgment, show a valid claim against the government.

1. The papers do not show that any services were rendered under the contract. If such services were rendered, an account, in form, should be made out against the Osages, with such proof of services rendered as would satisfy the Secretary of the Interior, and his approval should be obtained.

2. If the services were rendered is it clear that they can be paid for under that clause of the act of May 21, 1880: "Other expenses contracted, &c., in the execution of said trust"?

3. While the power of attorney is irrevocable, the contract was limited to three years, and expired on the 15th of February last. The claim is based on the contract, and by the terms thereof the contracting party on the part of the Indians agreed that "for the payment of said per cent. the Osage National Council will issue a requisition on the Hon. Secretary of the Interior."

Has such requisition been issued? Has it been demanded and refused? Can this claim be paid except upon such requisition, or upon its demand and refusal?

I have only hastily examined the papers, but such examination has impressed me with the propriety of returning them for further consideration by you.

Very respectfully,

O. FERRISS,  
Auditor.

Hon. R. E. TROWBRIDGE,  
Commissioner of Indian Affairs.

No. 6.

DEPARTMENT OF THE INTERIOR,  
OFFICE OF INDIAN AFFAIRS,  
Washington, July 1, 1880.

SIR: I have the honor to acknowledge the receipt of your communication of this date, with reference to the claim of Charles Ewing for \$59,742.60, and have to reply as follows:

1. In answer to your first objection I have to advise you that the Secretary of the Interior referred the petition of Charles Ewing to this office for settlement of his claim under a formal contract, together with the evidence from the General Land Office that said Ewing had, under his employment (as attorney) of the Osage Indians, recovered for his clients the sum of \$792,773.04, and this office and the honorable Secretary of the Interior have approved said Ewing's affidavit, in conformity to the act of May 21, 1872, specifically stating his services under his contract.

2. The act of June 16, 1880, provides for the payment out of the funds arising under it, of all debts contracted by the United States, or the Osages, in execution of the trust created by the treaty with the Osages of 1865-'67.

The services of Charles Ewing were clearly in execution of said trust, inasmuch as he procured payment for certain lands of the Osages which the United States, as trustee, should have sold at \$1.25 per acre, but which it granted to the State of Kansas, and for which it declined to compensate the Indians until after the claim had been argued and urged by said Ewing.

3. The contract of Charles Ewing was limited to February 15, 1880, but the fact appears that he had secured the approval of this department of the claim of his clients to compensation for the lands in question more than a year before that time, and had thereby earned his fee. The delay since that date was due to the necessity of this department procuring legislation under which to carry its judgment into effect.

The proviso in Ewing's contract for the issuance of a requisition by the Osages for his fee is a nullity, inasmuch as the Osages cannot legally draw a requisition on their funds, all of which are expended solely under or by orders of this department.

Very respectfully,

E. J. BROOKS,  
Acting Commissioner.

Hon. O. FERRISS,  
Second Auditor.

No. 7.

TREASURY DEPARTMENT, SECOND AUDITOR'S OFFICE,  
Washington, D. C., July 2, 1880.

SIR: The claim for \$59,742.60 in favor of Charles Ewing, under a contract with the Osage Indians, through their delegates, received from the office of Indian Affairs for settlement on the 30th ultimo, is herewith reported not allowed, and for the following reasons:

1st. The papers do not contain evidence that the claimant has rendered the services required of him by the terms of the contract, and there is no evidence that the requirements of section 2104, Revised Statutes, have been complied with.

2d. There is no account, in form, for services rendered, nor vouchers of any kind, nor their equivalent.

3d. The papers contain no proof that the *Secretary of the Interior* has certified to the Secretary of the Treasury such an account as he is directed to do by the act of June 16, 1880.

4th. The affidavit mentioned in the letter of the Acting Commissioner of Indian Affairs, of the 1st instant, specifically stating the services of the claimant rendered under his contract, has not been filed, and it is held here that such a paper is important for the records of this office.

In view of the fact that there is no evidence that the Secretary of the Interior has approved the account, it may well be supposed that before doing so he would require the assent of the Osage Indians to the payment of the claims, as he approved the contract containing the clause declared by the Acting Commissioner of Indian Affairs to be a "nullity."

Very respectfully,

O. FERRISS,  
*Auditor.*

Hon. W. W. UPTON,  
*Second Comptroller.*

No. 8.

TREASURY DEPARTMENT, SECOND COMPTROLLER'S OFFICE,  
Washington, D. C., July 3, 1880.

SIR: Referring to your letter to the Hon. O. Ferris, Second Auditor, in reference to the claim of Charles Ewing for \$59,452.60, I have the honor to ask for the following evidence and information touching said claim:

1st. The original affidavit of said Ewing referred to in said letter.

2d. The order or indorsement of the Secretary of the Interior and the Commissioner of Indian Affairs, determining whether or not the contract in said letter mentioned "has been complied with or fulfilled," or a certified copy of said order or indorsement.

3d. Such information as you have as to the authority of the persons named in said contract as parties of the first part to act for the said Osage Indians.

4th. Evidence that the Secretary of the Interior has certified to the Secretary of the Treasury the sum due the trust, as provided by the act of June 18, 1880, and the amount thereof.

Very respectfully,

W. W. UPTON,  
*Comptroller.*

Hon. R. E. TROWBRIDGE,  
*Commissioner of Indian Affairs.*

No. 9.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,  
Washington, July 6, 1880.

SIR: In answer to your communication of the 3d instant, asking "additional evidence and information touching the claim of Charles Ewing for \$59,452.60," I have the honor to submit the following inclosures and statements, &c.:

1st inclosure. The original affidavit of Charles Ewing, relative to his professional services for the Great and Little Osage Indians, which was made in accordance to section 2104, United States Revised Statutes, and filed in support of said Ewing's claim for the sum named.



This affidavit having been examined by the Commissioner of Indian Affairs and the Secretary of the Interior, as required by said section 2104, was "approved" by each of them as sufficient, in their judgment, to justify the claim of said Ewing, which this bureau thereupon, in conformity with established usages, stated to the Second Auditor of the Treasury.

2d. The persons who sign the contract, as parties of the first part, with said Ewing were Osage chiefs, well known to this department in the management of Osage affairs.

3d. In June, 1877, these men appeared at this department, were recognized and received by the Commissioner of Indian Affairs. There has never been any question as to their identity, nor as to their authority in the premises, all of which was duly considered by the honorable Secretary of the Interior and the Commissioner, who, at the time, approved the power of attorney and contract executed by them with said Ewing.

4th. The evidence that the Secretary of the Interior has certified to the Secretary of the Treasury the sum due the Osages under the act of June 16, 1880, in which the fee of said Ewing was estimated, is, I understand, now in the office of the Second Auditor, and will be of record in your office, and is the best evidence on that point that can be furnished by the department.

Very respectfully,

E. J. BROOKS,  
*Acting Commissioner.*

The SECOND COMPROLLER, *Treasury Department.*

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No. 10.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,  
*Washington, D. C., July 7, 1880.*

SIR: Referring to the office letter of yesterday, I am informally advised that the statements of facts therein contained are not in form to exactly meet your views. In addition, and supplemental to said letter, I desire to make the following statement:

In regard to the authority of the persons named in said contract made with Charles Ewing, of date February 14, 1877, I have to state that at that date the said Joseph Pawnee-pash-e, Black Dog, and Augustus Captain were a delegation of Indians empowered to act for the Great and Little Osage Indians in all respects in regard to the lands and all the interests of said tribes, and were then duly recognized as such by the Secretary of the Interior and by the Indian Department; and at the date of said contract it was decided by the Secretary of the Interior and the Commissioner of Indian Affairs that they had power to enter into said contract on behalf of the said Great and Little Osage Indians.

Inclosed I have the honor to retransmit the affidavit of General Ewing, with the approval of this office and the honorable Secretary of the Interior indorsed thereon, and drawn as nearly as we can understand to meet your views.

I beg, respectfully, to state that all of the facts in connection with the making and approval of this contract, and the labor performed thereunder by the attorney, have been, perhaps, more fully understood by this office and the Department of the Interior, whose duty *alone* is to determine the questions connected with the fulfillment thereof, than has any similar question heretofore passed upon and transmitted to the Department of the Treasury.

Very respectfully,

E. J. BROOKS,  
*Acting Commissioner.*

HON. SECOND COMPROLLER OF THE TREASURY.

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No. 11.

*The United States, trustee of the trust funds of the Great and Little Osage Indians, to Charles Ewing, Dr.*

To professional services rendered to the Great and Little Osage Indians in procuring from the United States the sum of \$792,701.27, which is to be placed to the credit of the Osage Nation, in pursuance of his contract with said nation, dated February 14, 1877, seven and a half (7½) per cent. on said amount.....

\$59,452 60

CHARLES EWING,  
*Attorney of Osages.*

## DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,

July 7, 1880.

The within account for \$59,452.60 is approved.

E. J. BROOKE,  
*Acting Commissioner.*

## DEPARTMENT OF THE INTERIOR,

July 7, 1880.

The within account for \$59,452.60 is approved.

C. SCHURZ,  
*Secretary.*

## No. 12.

Charles Ewing, attorney of law, of Washington, D. C., being duly sworn, deposes and says:

1st. That the contract between the Great and Little Osages and himself, dated the 14th day of February, 1877, is the original and only contract entered into between the parties thereto relative to the subject-matters named therein, and that it "was reduced to writing and executed by the parties thereto at the date and for the purposes therein named."

2d. That the names of the real parties in interest in the original contract are named therein; that Joseph Pawnenopaske, Governor, Black Dog, and Augustus Captain signed said contract as the agents of the Great and Little Osage Nation of Indians, under authority of a resolution of the Osage National Council, which is attached to said contract, now in possession of the United States.

3d. That there was no act or thing done under said contract prior to its being filed with the honorable Secretary of the Interior, nor was there any money or other thing of value paid by either of the parties thereto to the other, or to or by any other person in the matter.

That the services performed by himself under said contract were those of an attorney at law. The particular acts performed during the past three years that can be compiled from the records of his office are as follows:

1. In the winter of 1877-'78 he was engaged in collecting the data on which his clients' case was founded, and in a study of the treaties, laws, and practice of the government in such cases.

2. November 27, 1878, he filed with the Secretary of the Interior his petition, setting forth the claims of his clients and the law and facts relied upon in support thereof.

3. December 23 and 24, 1878, and from time to time thereafter, he was engaged in the discussion of his said petition in the Bureau of Indian Affairs.

4. In January, 1879, he prepared a bill to be submitted to Congress authorizing the settlement of the claims of his clients, a draft of which said bill was under discussion in the department and bureau for several days.

5. He prepared an amendment to said bill, at the suggestion of the Commissioner of Indian Affairs, providing for a settlement with the general civilization fund for the sixteenth and twenty-sixth sections of the Osage ceded lands.

7. He caused said bill, together with a petition in support of the same, to be introduced in the Senate and House of Representatives.

8. Prepared and printed a full compilation of both laws and treaties in support of said petition and bill, and filed them with the proper committees of Congress.

9. Filed with the proper committees an argument on support of said petition and bill.

10. During the remainder of the session made numerous oral arguments in explanation and support of said petition and bill.

11. About March 1, 1879, drew an amendment to the Indian appropriation bill, which was substantially the same as the act of June 16, 1880, and prepared an argument in its support, on which the Committee on Appropriations approved the amendment and allowed it to be offered in the open Senate, when the amendment was lost by an erroneous ruling of the Chair.

12. During the winter of 1879-'80 he again had the Osage land bill introduced in Congress, renewed his arguments, both written and oral, in its support, followed it vigilantly through all its tortuous course, and finally secured its passage and approval as the act of June 16, 1880.

And, generally, his services included all and everything that was necessary to be done, and he himself did everything that was legally done, in this behalf; but because of the nature of this service, it is impossible to give date or describe specific acts performed; but his services, their quantity, quality, and character, are well known to the officers of the government who had cognizance of the case.

4th. Said contract was submitted to only one Secretary of the Interior and one Commissioner of Indian Affairs, *i. e.*, the Hon. Carl Schurz and Mr. E. A. Hayt, on the day and year indicated in the official indorsements on said contract.

5th. In consideration of the said contract, duly executed and approved in strict accordance with the statutes, and the professional services performed thereunder, and the result obtained thereby, that he is legally and justly entitled to 7½ per cent. of the money certified by the Hon. Secretary of the Interior as due the Great and Little Osage Nation under the act of June 16, 1880.

And further says not.

CHARLES EWING,  
*Attorney for Osage Indians.*

Subscribed and sworn to before me this 1st day of July, 1880.

GEO. M. LOCKWOOD,  
*Notary Public.*

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,  
July 7, 1880.

Based on the within affidavit, under section 2104 Revised Statutes, it is hereby determined and decided that the contract mentioned in said affidavit has been complied with and fulfilled on the part of the said Charles Ewing.

E. J. BROOKS,  
*Acting Commissioner.*

DEPARTMENT OF THE INTERIOR,  
July 7, 1880.

Based on the within affidavit, under section 2104 Revised Statutes, it is hereby determined and decided that the contract mentioned in said affidavit has been complied with and fulfilled on the part of the said Charles Ewing.

C. SCHURZ,  
*Secretary.*

No. 13.

WASHINGTON, D. C., July 3, 1880.

SIR: The two thousand one hundred and third section of the Revised Statutes of the United States declares that "No agreement shall be made by any person with any tribe of Indians \* \* \* for the payment of any \* \* \* money \* \* \* in consideration of any service for said Indians in relation to their lands \* \* \* unless such contract or agreement be executed and approved as follows":

1st. It shall be in writing, &c.

2d. It shall be executed before a judge, &c.

3d. It shall contain the names of the parties in interest, &c.

4th. It shall state the time and place when made, &c.

5th. It shall have a fixed time to run, &c.

6th. The judge before whom it is executed shall state, &c.

The section then declares that—

"All contracts or agreements made in violation of this section shall be null and void, and all money \* \* \* paid to any person by any Indian or tribe \* \* \* on account of such services in excess of the amount approved by the Commissioner and Secretary for such services may be recovered by suit," &c.

Section 2104 declares that—

1st. "No money shall be paid to any \* \* \* attorney by any officer of the United States under any such contract [*i. e.*, such contract as is provided for in the two thousand one hundred and third section] \* \* \* other than the fees due him for services rendered thereunder." \* \* \*

2d. "And no money \* \* \* shall be paid to any person for services under such contract \* \* \* until such person shall have first filed with the Commissioner of Indian Affairs a sworn statement showing each particular act of service under the contract, giving date and fact in detail, and the *Secretary of the Interior* and the *Commissioner of Indian Affairs* shall determine therefrom whether, in their judgment, such contract \* \* \* has been complied with or fulfilled; if so, the same may be paid, and if not, it shall be paid in proportion to the services rendered under the contract."

The foregoing are *negative* statutes, and have the effect simply of modifying the laws governing contracts with Indians that existed at the date of their approval.

Prior to their enactment there were no statutes specifically prescribing the form in which such contracts should be made, but such contracts are recognized in a number of statutes relating to Indian matters, and there are quite a number of opinions of the

Attorney-General in cases arising under such contracts, in all of which, in accordance with sound reason and good conscience, these contracts are held to be legal and binding on the Indians and the United States, provided only that they are not tainted with fraud or covin as against the Indians.

Among these opinions is one by the eminent Attorney General Gilpin, who says, in a claim for professional services performed for an Indian: "Where an attorney has performed an important service, collected the evidence, and been instrumental in securing a claim which might otherwise have been lost; and when this has been done under a stipulation, or with a *bona fide* understanding that he was to receive the amount to which he was entitled directly from the United States, he has an interest in the fund which the principal himself could not revoke, and which the department is bound to recognize."

Following these statutes and opinions, I think that I am justified in saying that in no time in the history of our government have our Indian nations been deprived by the law of the power to make a contract, but, on the contrary, that their contracts, like all contracts made by individuals or communities, have always had legal validity if only they were not tainted with fraud; and certainly no man will assert, nor is any man justified in assuming, that I have departed in the least particular from the path of the strictest professional duty or honor in my dealings with the Osage Indians or the United States in my prosecution of this case.

The contract, under which the Commissioner of Indian Affairs has stated my claim for a fee for my professional service for the Osages in this matter, was drawn and executed in strict conformity with each of the six requirements of the statute above cited, and therefore stands before you a perfect, legal contract, that you, as the ultimate judge, are bound to recognize.

The two thousand one hundred and fourth section of the statutes above cited, directs:

1st. "That no money shall be paid \* \* \* [under my contract], other than the fees due [me] for services rendered thereunder."

Taking the letter and spirit of this sentence, and I respectfully submit that I am justified in asserting that it should be construed to mean that my fee *shall* be paid, *i. e.*, that the command that the law officers shall not pay anything but the fee due for services rendered under this contract is a command to them to pay that fee; it is equivalent to saying that you shall pay the fee due for services rendered by me under my contract, but you shall not pay for any other services.

Following this command for the payment of fees for services rendered under this contract, the section provides that such services shall be proved by my affidavit, filed with the Secretary of the Interior and the Commissioner of Indian Affairs, "and that they shall determine therefrom whether, *in their judgment*, such contract has been complied with or fulfilled."

Here, the statute leaves the determination of the fact upon which the payment of my fees depends, to the Secretary of the Interior and Commissioner of Indian Affairs, and I respectfully submit that in auditing this account, the only question that can be properly asked is, have the two officers named in the statute decided that question?

This question, you will observe, the Commissioner of Indian Affairs has answered in his letter to the Second Auditor, which is now before you.

The statute then goes on to say, that this fact being settled, my fee "*may* be paid."

You will please observe that in the first part of this same section the expression is not that such attorney's fees "*may*" be paid, but that they "*shall*" be paid; and further, that in the conclusion of the section it says that if the Secretary and Commissioner do not fully approve the affidavit of the attorney, then his fees "*shall* be paid in proportion to services rendered under the contract."

Now, I submit that it is clearly not admissible for any one to hold that the *command* in the first part of this section is abrogated by the word "*may*," so far as the claim of an attorney is concerned, who has established the fact that he has done his whole duty in the premises, and so leave his right to a fee, to be recognized or not, as the law officers of the government may determine at their pleasure; and that the command "*shall*" is revived again at the end of the section in favor of the attorney, who the Secretary and Commissioner have decided has only partly performed his duty, but that the word "*may*" is here to be held to mean "*shall*," and so harmonize the letter and the spirit of the section.

Any other construction would involve the absurdity of holding that the legislator here intended to insure to the negligent and slothful attorney, the payment of his fee, and to leave the man, whose work is justified in full, without any positive legal right to compensation for his professional services.

I am, very respectfully,

CHARLES EWING,  
*Attorney for the Osages.*

Hon. W. W. UPTON,  
*Second Comptroller.*

No. 14.

TREASURY DEPARTMENT, SECOND COMPTROLLER'S OFFICE,  
*Washington, D. C., July 7, 1880.*

SIR: I have the honor to return herewith the claim of Charles Ewing for \$59,542.60, under the inclosed contract with the Osage Indians, with all the papers in the case, including further evidence therein, on the points mentioned in your letter of the 2d instant, viz:

1st. The affidavit as to services rendered by him, and the decision of the Secretary of the Interior and Commissioner of Indian Affairs thereon.

2d. A formal account or bill of the claimant for the services and the action of the Indian Department thereon.

3. The decision of the Indian Department as to the authority of the contracting parties.

I have also to state that I am informed that the certificate mentioned in the third paragraph of your letter, above referred to, has recently been transmitted to your office in connection with the account in regard to the proceeds of the lands in question, and to request an examination of the case upon all the evidence and papers now submitted.

It is now understood that the Secretary of the Treasury has decided that the interest on the net proceeds of lands recovered, mentioned in the statement certified to him by the Secretary of the Interior, must be covered in, as "interest," and kept distinct from the net proceeds of the lands which constitute the interest-bearing funds due the Osages under treaty.

This being the case, I suggest a change in the designation of appropriation so that this claim shall be paid from the "interest" instead of the "principal" due the Osage Indians.

Very respectfully,

W. W. UPTON,  
*Comptroller.*

Hon. O. FERRISS, *Second Auditor.*

No. 15.

TREASURY DEPARTMENT, SECOND AUDITOR'S OFFICE,  
*Washington, D. C., July 9, 1880.*

SIR: The claim for \$59,542.60 in favor of Charles Ewing, referred to in my letter of the 2d instant, is again herewith reported not allowed.

The additional papers furnished since last-mentioned date do not, in my judgment, authorize the payment of the full amount of the percentage named in the contract.

The contract bears date February 14, 1877, and has three years to run. It purports to be between the Osage nation, of the one part, and Charles Ewing, of the other part. In consideration of certain services to be performed by Mr. Ewing, he is to receive as compensation 7½ per cent. upon all moneys that he shall cause to be paid into the Treasury of the United States to the credit of said nation. The services to be performed by him in addition to "all other things that an attorney may properly do and perform for the period of three years from this date," are

"First. To review the accounts of the said nation with the United States for and on account of the sale of the Osage lands in the State of Kansas.

"Second. To secure the payment from the United States for the sixteenth and thirty-sixth sections in each of the townships embraced in the public surveys of Osage lands in the State of Kansas, that were granted by the United States to said State for school purposes with interest thereon at the rate of five per cent. per annum from the date of final survey of each township until the date of the allowance and payment of this claim.

"Third. The payment to the members of the Clermont band of Osages, of the money still due them under the 9th article of the treaty of March 2, 1839.

"Fourth. To secure the granting of pensions to the families dependent upon the Osages who were killed by citizens of the United States (known as Kansas militia) in 1873, for which claims are now on file in the Indian office.

"Fifth. To secure the granting by the United States to the Great and Little Osage Nation of a patent for the lands it now owns in the Indian Territory."

In the language of the contract he "has agreed faithfully and intelligently to perform any and all the duties that may be imposed upon him by reason of the matters herein set forth."

It will be perceived that Mr. Ewing has contracted to do something more for the Indians than procure the payment into the Treasury of the United States to their credit of certain moneys supposed to be due them.



His affidavit does not show that the services required in the third, fourth, and fifth specifications have ever been performed in whole or in part. The conditions of the agreement are as imperative in requiring these services of Mr. Ewing as those specifications which require him to secure the payment of money into the Treasury. By said third, fourth, and fifth specifications he contracts absolutely to secure payment to the Cleremont band of Osages, the granting of pensions to certain families, and the granting of a patent to the Indians for certain lands.

These services have never been performed. There is no pretense that any services have been rendered with a view of securing these benefits to the Indians. That such services are a condition precedent to full payment to Mr. Ewing is unquestionable. The contract admits of no other construction.

This brings me to the consideration of the question, as to how far the accounting officers of the Treasury, are bound by the action of the Commissioner of Indian Affairs and the Secretary of the Interior.

Those officers under date of July 7, 1880, by indorsement on the affidavit of Mr. Ewing, referred to, have determined and decided that the contract has been complied with and fulfilled on his part.

By section 2104 of the Revised Statutes, such decision is an indispensable requirement to the payment of money stipulated to be paid upon contracts of this character. But it does not follow that such payment must be made. I am aware that the word "may," in statutes pertaining to the duties of public officers is usually construed as imperative and in the same sense as "shall." But the language of the statute in this case is peculiar and by its terms repels the idea that payment in full must be made upon the determination and decision of the Commissioner and Secretary. It provides that no money shall be paid until those officers shall determine "whether in their judgment such contract or agreement has been complied with or fulfilled; if so, the same may be paid, if not, it shall be paid in proportion to the services rendered under the contract."

The use of the word "may" in contradistinction to the word "shall," in the same line, sustains this construction of the statute.

Independent of the statute referred to, the decision of the Secretary of the Interior is not binding and conclusive upon the accounting officers of the Treasury.

In April, 1849, Hon. Reverdy Johnson, then Attorney-General, held that the decision of the head of a department, directing payment of a particular claim, is binding upon all subordinate officers by whom the same is to be audited and passed.

Subsequently a law was passed by Congress which is now embraced in the Revised Statutes, and numbered section 191, which provides that the balances stated by the auditor and certified by the comptroller, "upon the settlement of public accounts, shall not be subject to be changed or modified by the heads of departments, but shall be conclusive upon the executive branch of the government, and be subject to revision only by Congress or the proper courts." Such is now the law.

I have not considered this case as an allowance under section 2104 in proportion to the services rendered under the contract. No such claim is presented. It is a claim for full compensation, as stipulated to be paid for all the services rendered, when the papers show only part performance of those services. In the views expressed above I have assumed that the contract upon which this claim is based, in form, contents, and execution, was in strict compliance with the law.

It belongs to a class that, for the purpose of protecting the Indians, Congress has seen fit to define and limit by special enactment.

Among the requirements of the statute these contracts "shall have a fixed and limited time to run, which shall be distinctly stated." With this requirement of law, I cannot say that time is not of the essence of this contract, which was dated on the 14th day of February, 1877, and was limited to three years, which expired on the 14th day of February, 1880. While Mr. Ewing had a power of attorney from the Indians, irrevocable, and by its terms in force in June, 1880, when the law was passed, pursuant to which the money was paid into the Treasury, upon which 7½ per cent. is claimed as fees, the contract under which he was acting had expired by limitation, and nothing whatever had been accomplished by the claimant that inured to the benefit of the Indians.

That Mr. Ewing may be entitled to a fair compensation for services rendered the Indians under his power of attorney is quite probable; but having consummated nothing of benefit to them within the three years' limitation, I doubt his right to anything whatever under the contract.

If I am incorrect in this, still, for the reasons heretofore given, he is certainly entitled only to a compensation in proportion to the services rendered.

Very respectfully,

O. FERRISS,  
*Auditor.*

Hon. W. W. UPTON,  
*Second Comptroller.*



No. 16.

WASHINGTON, D. C., July 9, 1880.

SIR: In reply to the letters of the Second Auditor of the Treasury, stating his reasons for disallowing the account of General Charles Ewing, on his contract with the Great and Little Osages, I desire to say that his first letter referred to the absence of certain evidence which he thought was necessary to establish his claim. That, as you are aware, was furnished, and no complaint on these points is made in his second letter; but he raises other objections, chiefly on matters which were before him when his first letter was written. He calls in question the power of the Secretary of the Interior and Commissioner of Indian Affairs, under section 2104, to "determine" whether, in their judgment, such contract has been fulfilled.

It is very clear, from the statute, that the Secretary and the Commissioner shall determine all matters as to entering into the contract, the service under it, and the rate of compensation. The assumption of the Second Auditor that in case these gentlemen shall fail to determine that the contract has been complied with, that the accounting officers of the Treasury shall then exercise the function of "determining" whether it has or not and what the compensation shall be, has no foundation in the language of the statute; but, in any event, the Secretary and Commissioner, under the law, "determined" all these questions, touching compliance with contract and rate of compensation.

In the same section of the act of 1872 it says: "But the money due the tribe, Indian, or Indians, as the case may be, shall be paid by the United States, through its own officers and agents, to the party or parties entitled thereto. The whole section refers solely to these contracts and is mandatory.

Under the general laws regulating the management of Indians the jurisdiction rests with the President, the Secretary, and Commissioner of Indian Affairs. There are special statutes, however, such as the act of 1872, under which the Secretary and the Commissioners are authorized to approve and determine all matters in relation to these contracts. They are in this case a commission to determine these questions, and their decision is final.

The Second Auditor states, as a barrier to this claim, that certain things in the contract have not been complied with, numbered 3, 4, and 5. The contract, it will be observed, embraces several subjects, on which General Ewing was authorized to act. Without that authority he could not have acted. The contract was that he was to receive 12½ per cent. on what he recovered, which was reduced to 7½ by the Secretary and Commissioner. His fee was purely contingent. He might fail in all or any. No one of these funds if obtained was justly chargeable with a fee due on the other. No account has been rendered for such service. This account is merely a charge against the amount obtained.

There is nothing in the language of the contract which obliges him to accomplish all or forfeit his rights under any, and this objection to allowing his claim has not the slightest force.

The point attempted to be made that the money was not placed to the credit of the Osages during the term of his contract has no force. More than a year before it expired he secured the decision of the Indian Department in favor of its justice.

As his sworn statement shows, he did this and framed the bill which is now a law. He appeared before the committee with his argument. The result followed, and these were the items of service that the Supreme Court in these cases has decided to be legitimate service. The delay in passing the bill was a matter over which he had no control. Any action under it was the work of the officers of the government. The work was done, and these things could not forfeit his rights, and his service was approved by the only officers who were to approve it. His clients received valuable advantages, of which a certain percentage was legally his.

The citation by the Second Auditor of paragraph 191, which provides that the public accounts audited and certified to shall not be subject to changes by the heads of department, has no applicability to this case. It does not conflict with paragraph 2104 (Rev. Stat.), or take away the right of determining from Secretary and Commissioner. If the two sections conflicted, the latter is of the most recent date, but the statute he quotes has reference to an entirely different matter. In a similar case, when the Secretary of War was to decide on the Florida war claims, under the statute, the Secretary of War was held to be the party to determine.

While the Auditor admits services, he claims that the accounting officers should enter into the case *de novo*, and determine what the service was, and what the compensation should be. Already everything has been done as the law points it out, and in a manner which we have reason to expect will be satisfactory to your office. On this matter General Ewing has rendered valuable service. His rights are all under the statute, and he has in this case no remedy in the courts. If the operation of the act of 1872 can thus be nullified and set aside, all security for rights under it would cease. A grievous wrong would be done for which there is no remedy. There is no

reason in the letter of the Second Auditor why the claim passed by the Secretary and Commissioner should not be allowed.

I am, with respect, your obedient servant,

W. S. PHILLIPS.

Hon. W. W. UPTON,  
Second Comptroller of the Treasury.

No. 17.

WASHINGTON, D. C., July 10, 1880.

SIR: I have the honor to submit the following as my answer to the letter of the Second Auditor of the Treasury dated the 9th instant, in which he assigns his reasons for his rejection of my claim against the Great and Little Osage Indians for the sum of \$59,742.60, which was, in due form and strict compliance with law, adjudicated and allowed to me by the Commissioner of Indian Affairs and the Secretary of the Interior.

1st. The Auditor assumes that I am not entitled to any compensation under my contract until I have discharged all of the duties in all of the cases in which my clients gave me a contract for fees, and that this claim is intended to be in full satisfaction of all the services that my clients expect of me, or that I intend to render to them.

2d. He then states that I have contracted absolutely to perform not only the duty I have performed, and for which I claim pay, and for which the Secretary of the Interior has awarded me pay, but a lot of duty in *three other cases*, and that inasmuch as I have not as yet gained the other cases, I am not entitled to the pay for the case I have gained.

3d. He then says that my contract expired by limitation on the 14th February last, up to which time I had secured no benefit to my clients.

And for these reasons he concludes that I am not entitled to any compensation.

I take issue with the Auditor on each of these propositions, and I assert that his reflections relative to the authority of the auditing officers, and the officers of the Department of the Interior over this case, are unsound in law and logic.

I.

As to the assumption—

That I am not entitled to any fee until I have discharged all of the duties in all of the cases in which the Osages have employed me; and,

That this claim is in full satisfaction of all the services my clients expect of me, or I intend to render them.

The second branch of this assumption I can dispose by my personal statement that it is not true, but that, on the contrary, this is not my last but my first claim for fees under my contract; that my clients do expect me to perform other valuable service for them, and that I do intend to perform other professional and valuable services for the Osages, under my power of attorney and contract for fees, unless it be held that I am not to be compensated for the services that have placed nearly \$800,000 to the credit of my clients, in which event my poverty will prevent my working for this defenseless people.

The first branch of this assumption is not warranted by any possible construction of my contract, or the practice in our courts of law, or in the executive departments.

My clients have made me their attorney "for the purpose of securing a just and legal settlement of all \* \* \* [their] accounts for, and account of all moneys that have been or shall have been, or that may hereafter be received by the United States on account of all or any of \* \* \* [their] lands that may have been or may hereafter be transferred," &c.; and they have contracted to give me for my services a per cent. "of all moneys [that I] may hereafter,"

1st. Cause to be paid to said nation;

2d. Or any band thereof;

3d. Or cause to be passed to the credit of the nation in the Treasury of the United States.

And for the payment of said per cent. on *any and all sums* so placed to said credit, they agree to issue a requisition; [and] they further authorize the Secretary of the Interior "to make full payment."

On my part I agreed "faithfully and intelligently to perform any and all the duties that may be imposed upon [me] by reason of the matters herein set forth."

You here see that my clients want me to settle the accounts of sales that *have been made*, and all that *may hereafter be made*, and that they agree to pay me a per cent. on each of *three separate and distinct class of credits*, and that they speak of *payments to*

me on *any* and *all* sums of money I succeed in securing for them; and you find that there is no discretion left to any one in deciding whether I am entitled to my fees as I earn them, or must wait, as the Second Auditor asserts, until the United States has sold the last acre of the Osage's share of the "bad lands" that make up a part of the Great American Desert, which will certainly not occur in the next hundred years, if it ever occurs. The contract says that I shall have payments on any and all sums, and I have demanded and been awarded the payment of the per cent. due me on the first sum I have earned for my clients.

The Second Auditor is, then, not correct in this assumption, and all the reasons based upon it and his conclusions fall with it.

The Auditor is led into this error by taking it for granted that all of the professional business I have for the Osages make up *one* case. This is not the fact. A demand for a land patent is a totally different case from an application for a pension, or a petition for the payment for lands given away, or the correction of errors in the trust accounts of lands sold. Each of these is a separate and distinct case; when one is disposed of none of the others is advanced a hair thereby, but must be taken up anew; and consequently my contract must be read and passed upon anew with each case in the order in which I am able to complete them. And so reading my contract, by which I am entitled to 7½ per cent. of the money I have earned for the Osages on account of their lands given by the United States to the State of Kansas, I have, in the language of the 2104th section of the Revised Statutes, "fulfilled" my agreements *in all* particulars relating to this fee, and the Commissioner of Indian Affairs and the Secretary of the Interior were correct in their judgment that I had complied with my contract.

## II.

The auditor again says:

1st. Ewing is, by his contract, to receive a per cent. upon "all moneys that he shall cause to be paid into the Treasury of the United States to the credit of said Indians."

2d. The services to be performed by Ewing, in addition to all other things, &c., are:

a. To review the trust accounts for the sale of Osage lands.

b. To secure payment for the 16th and 36th sections of Osage lands.

c. To secure payment to the Clermont band, &c.

d. To secure certain pensions.

e. To secure a patent, &c.

3d. Ewing contracts absolutely to perform each of these things.

4th. The conditions of his agreement are as imperative on these points as they are relative to funds placed in the Treasury.

5th. These services have not been performed, and their performance is a condition precedent to a *full* payment.

The first of these propositions is not correct, for the reason that it carries with it the impression that under my contract I am to receive a fee for only such money as has been placed in the Treasury to the credit of the Osages, which is not true, as my contract says that I am to receive a per cent. of such moneys, and also a per cent. of moneys paid to the nation, to individuals of the nation, or to a band of the nation, which breaks up the *unit idea*, with which the Second Auditor would strangle me, and proves that I am entitled to a fee in each *case* named in my contract.

The second of these statements is substantially correct.

The third statement, *i. e.*, that I contracted absolutely to perform each of them, is not correct. Referring to my contract you will see that the only "absolute contract" that I have made with my clients is found in my agreement "faithfully and intelligently to perform any and all the duties that may be imposed upon (me) by reason of the matters herein stated."

This is a totally different thing from "*contracting absolutely*" to do five separate and distinct things, in which to gain four of the things to be done and to lose one would work a forfeiture of all pay. I have contracted to faithfully and intelligently discharge any duty assigned me, and the Osages contract to pay me a per cent. on all the money I get for them. And there is not the slightest pretext for assuming that my fee in any *one* item of very many duties is to depend upon my success in any other item, or to be reduced by my failure in any other case.

The fourth statement, *i. e.*, the conditions of my agreement are as imperative on all the cases named as it is relative to moneys placed in the Treasury, is not correct or by any means clear.

What is here meant by the word "imperative" I can't understand. I know what an imperative statute is, or an imperative judgment, or military order, but an imperative contract is beyond me, *i. e.*, so far as the parties to the instrument are concerned.

The Auditor doubtless meant that the conditions of my agreement are as obligatory in each of the cases named that have not yet been completed as they are in this one that is completed; and in this he is strictly correct, and occupies the position that I have heretofore taken in this paper. But it by no means follows, and certainly no man

can maintain with any show of reason, that therefore I must settle and dispose of all of these cases before I can have a fee in any one of them.

The fifth statement, *i. e.*, that the performance of *all* of the services imposed on me by the contract is a condition precedent to a *full* payment of my fees, is perfectly sound, but that does not deprive me of my legal right to a part payment of the fees I expect to earn under this contract, or to full payment of fees due me in any one case named in said contract, and this is all that I asked, and all that has been awarded me.

### III.

The Auditor states that my contract for fees expired on the 14th February, 1880, and that up to that time "nothing whatever had been accomplished by (me) that inured to the benefit of the Indians."

It is true that my contract expired on the 14th of February last, but the balance of this statement is not true, and there is not an iota of evidence in the case that warrants the statement that I had done nothing prior to February 14 that inured to the benefit of my clients. On the contrary, there is *conclusive* evidence with the case, *i. e.*, the official statement from the Department of the Interior, that more than a year prior to that date I had argued the first case of my clients before the Indian Bureau and the Department of the Interior, and secured the judgment on which my clients have since realized nearly \$800,000.

CHARLES EWING,  
*Attorney for Osages.*

Hon. W. W. UPTON,  
*Second Comptroller United States Treasury.*

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### No. 18.

I, Charles Ewing, being duly sworn, depose and say that immediately upon the execution of the contract between the Great and Little Osage Indians and myself, of date February 14, 1877, I entered upon the discharge of all the requirements of said contract, and from that time during the entire period of three years next following the date of said contract, I faithfully and intelligently and industriously acted as the attorney of the said Great and Little Osage, and in the discharge of all the duties imposed on me by the said contract; and that during all that period I faithfully and intelligently and industriously performed all the duties of an attorney of said Great and Little Osage, and performed all the duties imposed on me by said contract in all matters submitted to me by said nation, and particularly in each of the matters in which I was charged, *i. e.*:

1st. To review the accounts of the said nation with the United States for and on account of the sale of the Osage lands in the State of Kansas.

2d. To secure the payment from the United States for the sixteenth and thirty-sixth sections in each of the townships embraced in the public surveys of Osage lands in the State of Kansas, that were granted by the United States to the said State for school purposes, with interest thereon at the rate of 5 per cent. per annum, from the date of final survey of each township, until the date of the allowance and payment of this claim.

3d. The payment to the members of the Clermont band of Osages of the money still due them, under the ninth article of the treaty of March 2, 1839.

4th. To secure the granting of pensions to the families dependent upon the Osages who were killed by citizens of the United States (known as Kansas militia) in 1873, for which claims are now on file in the Indian Office.

5th. To secure the granting by the United States to the Great and Little Osage Nation of a patent for the lands it now owns in the Indian Territory.

And that immediately after the execution of said contract I reviewed the accounts of the said nation with the United States, for and on account of the sale of the Osage lands in the State of Kansas, and that from the date of said contract, during all the said period of three years, I industriously, faithfully, and intelligently prosecuted, on behalf of said Great and Little Osage Nation, each, every, and all of said matters and business above mentioned; as intended by said contract, and in all respects complied, on my part, with the said contract. I further depose and say that from the expiration of said three years to the present time I have continued industriously, faithfully, and intelligently to prosecute, on behalf of said Great and Little Osage Nation, each, every, and all the matters and business as above stated, and am still industriously, and faithfully, and intelligently prosecuting the same.

And I further depose and say that from the date of said contract to the present time I have, as the attorney of said Great and Little Osage Nation of Indians, faithfully,

intelligently, and industriously performed all the duties that have been imposed upon me by reason of the matters in said contract set forth.

CHARLES EWING,  
*Attorney for the Osages.*

Sworn to and subscribed before me this 12th day of July, A. D. 1880.

P. E. O'CONNOR,  
*Notary Public.*

No. 19.

WASHINGTON CITY, D. C., July 12, 1880.

SIR: In addition to what was filed with you on Saturday, and to place definitely several points referred to in the oral discussion, I would briefly submit these points as conclusive in the case of General Charles Ewing.

Sections 2103 and 2104 of the Revised Statutes refer solely to contracts of this character. Such contracts had previously been made, executed, and paid. These two paragraphs from that date forbid the payment of any such contracts by any officer until certain things have been done and determined by certain persons, and these persons are designated by the law for this purpose, and are the Secretary of the Interior and the Commissioner of Indian Affairs. The act has but these essential or vital points. In paragraph 2103 two of the points are covered. The contract shall be approved by them, when it shall be valid and binding on all parties. That has been done. Second, they shall fix his rate of compensation, and any payment save as so determined by them, is absolutely prohibited. The contract as first entered into was for 12½ per cent.; they reduced it and fixed it at 7½ per cent. of all moneys recovered. The statute gave them and alone the power to do this, and it was done. The third act is provided for in section 2104, when they are to "determine" on his sworn statement that the contract or agreement has been complied with or fulfilled. This has been done. There is no provision in this or any other statute providing for an appeal from a review of these judicial proceedings. There is no other officer who is authorized to change or modify the rate of compensation, or to overrule their determination that the agreement has been complied with.

This certificate is ample authority for the disbursing officers, and the law knows none other, for in all cases where the law gives a specific function to a certain officer, it can be exercised by none other. The law fixes the entire responsibility of entering into such contracts with them, and of determining whether it has been complied with, and fixing the compensation, and there is neither authority nor reason why any other officer should assume such responsibility.

The above is all there is, technically, to the case. As the mind of the Auditor is probably influenced by the size of the fee, although that is not a matter under his jurisdiction, I do not hesitate to say that the entire amount is justified in equity as well as law. A contingent fee must be large enough to cover risks and chances. When the service runs through years, and there is no retainer to meet his expenses, an attorney runs great risks. Gen. Ewing has worked for three years for these people to the impoverishment of himself, and the chances were, that without any fault on his part, he might fail to secure anything for his clients out of which his seven and a half per cent. could be collected. It might, in such event, and probably would, have totally ruined him. The department, which for years had refused to entertain this just claim of the Osages, were induced by Gen. Ewing to reconsider their decision, and while a year of the contract was still to run, rendered a decision in his favor. The bill he framed became a law. He did his work before the committees long before it expired. Thus everything was then done that an attorney could properly do, as these are the specific things the supreme court declared were proper services. He thus secures under his contract a large sum for the Osages, of which he only gets the price determined by the Secretary and Commissioner, of 7½ per cent. Such contracts the Osages could afford to make every day. Although his efforts secured payment of a large amount of money to the civilization fund, he is deprived of compensation for that.

In equity it belongs to him.

Again, the law says the contract shall set out the thing or things to be done. It may relate to one thing, or, as this contract did, include several things. This contract did not agree to give him a fixed amount for performing all of these. It merely gives him a fixed percentage of what he may receive, and this purely contingent fee he can only get out of what he obtained, and is clearly due therefrom.

Let me also call your attention to the act of June 16, 1880. Under its provision the Secretary of the Interior has almost the sole power of its execution. The amount he certifies to is appropriated. The money is placed to his credit as trustee. He alone can draw a requisition on it. He alone can direct the expenses to be paid. On his



requisition the "balance" is to be covered into the Treasury and held for certain specific purposes, he still being the trustee.

In adding this I desire to say that in all my legal experience of twenty-six years I have never seen a clearer case. I pride myself on the correctness of my legal opinions, and I say unhesitatingly that both law and equity point unhesitatingly to the prompt settlement of this account.

I have the honor to be, with respect, your obedient servant,

W. A. PHILLIPS.

Hon. W. W. UPTON,  
Second Comptroller of the Treasury.

No. 20.

TREASURY DEPARTMENT, SECOND COMPTROLLER'S OFFICE,  
Washington, D. C., July 13, 1880.

SIR: I have the honor to acknowledge the receipt of your letter of the 19th instant in relation to the claim of Charles Ewing for services rendered the Osage Indians.

As it seems to me clear that the claimant is entitled to some compensation for his services, I respectfully return the papers in the case, with an additional affidavit filed by the claimant, and present the following views on some of the points involved.

Your remark that you have not considered the case as an allowance under section 2104 Revised Statutes, in proportion to the services rendered under the contract, induces me to say, I think, under the practice in the accounting offices, this should be considered an application on the part of the claimant for whatever balance is due him for his services in obtaining the money above referred to.

In such cases the party can claim as much as he chooses to claim, and upon whatever grounds he thinks advisable, but the accounting officers must judge whether there are any grounds upon which he is entitled, and whether any balance is due.

Inasmuch as there are no pleadings in these cases, in which the basis of the claim might be specifically stated, I think the prevailing mode, and the one that best subverts the public interests, is to treat every such claim as a demand for whatever balance is due the claimant for the services or property specified in the account.

This view seems to me to be sustained by the language of the statutes which define the duties of the accounting officers, and I think any other course would lead to complications that we would desire to avoid.

The claimant's account or claim for what may be due him for these services being regularly before the accounting officers, he is entitled to a statement of the balance, if anything be due him, whether it is due because of a full compliance with the contract or because of his being entitled to a fair compensation for services rendered under his power of attorney.

The evidence clearly shows that professional services were rendered by him at the request of the Indians, and that those services have inured to their benefit.

The services of the claimant continued through the stipulated period at least, and the fact that the results of his labor were not realized in money until after the expiration of the period cannot, I think, upon any rational ground, deprive him of all compensation. Although it be true that the work in which he was aiding the Indians as their attorney was not in all respects consummated within the three years, it cannot be true that the work he did within that period was of no benefit to them, and if by the common law or by section 2104 above mentioned he acquired a right to compensation, he is not debarred because the money did not become due him within the three years the contract was to run. Whatever he might have recovered as the reasonable value of his service may become due as well after the expiration of that time as before.

Looking at the question of his rights under his contract, an analysis of its provisions, taken in connection with the statutes, shows that the claimant contracted to render certain professional services "for a period of three years from this date;" that is, from the date of the contract for a certain share of the fruits of his labor.

I think it clear that it was not stipulated that the claimant should guarantee the accomplishment of any one of the several objects or purposes mentioned; he did not contract that any one of them should be successful, nor that the benefit of any one of them should accrue to the Indians within the three years.

The contract declares that the Osages have constituted and appointed the claimant "the attorney of the said Osage Nation in all matters that may be submitted to him by said nation, and particularly have charged the said attorney as follows, to wit: To review the accounts of the said nation with the United States and on account of the sale of the Osage lands in the State of Kansas;" to secure certain payments specified; to secure certain patents, and generally to do all other things that an attorney may properly do and perform.



These are the matters the claimant was charged with by his clients; and by the contract he bound himself, "faithfully and intelligently to perform any and all the duties that may [might] be imposed on him by reason of the matters herein [in the contract] set forth." Hence he was bound to act as an attorney in each of these matters; but, as before stated, he did not guarantee their accomplishment. His obligation was faithfully and intelligently to act as attorney in these matters for three years.

The object and purpose of this contract being to secure the professional services of the claimant, and to fix upon the rate and mode of his compensation, and it being explicit as to the time the contract was to run, if he discharged all his duties during the whole time specified his obligations under the contract were at an end, and his contingent right to future payment became fixed and vested. Nothing more could be demanded of him under the written contract, and, so far as the rights of the parties depend upon its terms, any future services of the claimant might be considered gratuitous or as rendered in his own behalf, because of the interest he had already acquired in the money sought to be recovered.

If, however, the claimant has performed valuable services under the contract, but has not in all respects fulfilled it, by the last clause of section 2104 Rev. Stat. he is "to be paid in proportion to the services rendered;" and if such is the case, some rule must be applied in determining the proportion.

His affidavit of this date shows that he has, up to this time, done his duty as to securing pensions and securing patents, and still some of the money claimed to be due is not yet secured. At what rate or proportion shall he now be paid from that part which is secured? I take it for granted that, in regard to this particular service, he has performed all his duty to his clients. In fact, if success be taken as an element of proof, as it often is, there are decided indications of extraordinary services.

These Indians had a claim for \$1.25 per acre for this land, payable as the land should be sold. Without any such sale as was contemplated by the treaty, the lands were passed to the State of Kansas, and we are bound to take notice, as of geographical and historical facts, that there are vast quantities of these lands that will not probably be sold for \$1.25 per acre for many years to come, and that there are other portions that are actually desert lands. Yet, not only the \$1.25 per acre has been obtained on all these lands, but nearly half that amount in supposed interest has also been obtained.

If the case is to be treated as one of past performance because it has not yet been possible to accomplish all the objects proposed, it seems precisely like those cases where a party is entitled to recover on the common courts for past performance. (10 John., 36; 4 Cow., 564; 12 Wend., 386; 6 N. H., 497; 7 Wend., 2; Smith's Leading Cases, 42 and 43; 2 Parsons on Contract, 523).

When a party is entitled to recover for past performance, "the agreement of the parties, to a certain extent, furnishes the measure of remuneration," and "so far as the work was done under the special contract the prices specified in it are, as a general rule, the best evidence of the value of the work."

In this case the contract stipulates the same percentage on each amount of money to be recovered; and under the rule of compensation established by the courts in this class of cases of past performance, the stipulations of the contract will debar the accounting officers from fixing upon any other rate than that agreed upon by the parties.

If I am correct in this view, it is not necessary to decide the question whether the fact found by the Secretary of the Interior and Commissioner of Indian Affairs is a conclusive finding, because the balance to be stated in this case would not depend on the finding.

For these reasons, I have the honor to request that an account may be stated for the balance due the claimant on account of the money recovered in favor of his clients.

I am, very respectfully,

W. W. UPTON,  
Comptroller.

Hon. O. FERRISS,  
Second Auditor.

No. 21.

TREASURY DEPARTMENT, SECOND AUDITOR'S OFFICE,  
Washington, D. C., July 16, 1880.

SIR: I again return the claim of Charles Ewing for \$59,462.60, disallowed.

The additional affidavit made by him does not comply with the requirements of the statute, and states no facts that in any way alter the case.

From a portion of your letter, in which you assign your reason for returning the papers to me, I supposed you now regarded the contract as partially fulfilled by the claimant, and that he was entitled to part payment. Another portion of the letter treated the contract as fully completed, and Mr. Ewing as entitled to full payment. You closed with a request that an "account may be stated for the balance due the claimant."

My doubt as to what you desired by the request led to the personal inquiry of you yesterday, when you stated to me your request was that the full sum of \$59,452.60 should be stated and allowed.

It is evident from Mr. Ewing's letter of the 10th instant that he does not concur with either of us in his views of the contract. He regards this as a claim for part payment of the fees he expects to earn under the contract. This \$59,452.60 is, then, only the first installment, and he expects to continue his services notwithstanding the contract has expired by the limitation of a time fixed in pursuance of a statute requirement, and will present his claim for payment in installments from time to time, as he may deem most advisable. In this way the contract is to be perpetuated indefinitely, and an uncertain and unlimited amount of money is to be claimed by the attorney of this "defenseless people," as he himself styles them, for legal services rendered pursuant to his power of attorney and limited contract.

Your right as Second Comptroller to decide upon this claim, and all claims and accounts forwarded to you from this office, and by your decision reverse change, or modify the findings of the Second Auditor, is fully recognized. The current of authorities upon that question leads to no other conclusion.

And my duty is equally plain to sign such requisitions as conform to your decisions, whatever view I may entertain or may have entertained of the accounts or claims to be paid.

Very respectfully,

O. FERRISS,  
*Auditor.*

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No. 22.

TREASURY DEPARTMENT, SECOND AUDITOR'S OFFICE,  
July 2, 1880.

I certify that I have examined and adjusted the account of Charles Ewing, for fee charged by him under a contract with Osage Indian Nation, dated February 11, 1877, and find that there is nothing due said claimant (for reasons stated in my letter of this date herewith), as appears from the statement\* and vouchers herewith transmitted for the decision of the Second Comptroller of the Treasury thereon.

O. FERRISS,  
*Auditor.*

To the SECOND COMPTROLLER OF THE TREASURY.

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No. 23.

SECOND COMPTROLLER'S OFFICE.

I admit and certify a balance this sixteenth day of July, 1880, due the claimant, of fifty-nine thousand four hundred and fifty-two and  $\frac{60}{100}$  dollars, payable from "interest due on avails of Osage diminished reserve lands in Kansas."

W. W. UPTON,  
*Second Comptroller.*

Pay to claimant. Present.

NOTE.—In accordance with the foregoing certificate of the Second Comptroller, the sum of \$59,452.60 was paid to Charles Ewing by draft of the Treasurer of the United States, No. 10903, July 17, 1880.

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No. 24.

DEPARTMENT OF THE INTERIOR,  
Washington, May 23, 1881.

SIR: I inclose herewith a sworn statement of service, together with an account in blank,\* dated the 1st ultimo, in favor of Charles Ewing for services rendered the Great and Little Osages under his contract of February 14, 1877, filed the 13th ultimo.

\* For "statement" see Exhibit D.

† See No. 27 for the sworn statement. The blank account is omitted as immaterial.

You will cause an examination to be made of the affidavit, and if in your judgment the services rendered were such as were contemplated by the contract, you are authorized to state an account in favor of Mr. Ewing for the proper amount, and submit the same for approval in the usual manner.

Very respectfully,

S. J. KIRKWOOD,  
*Secretary.*

The COMMISSIONER OF INDIAN AFFAIRS.

No. 25.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,  
*Washington, May 26, 1881.*

SIR: I have the honor to acknowledge the receipt of your letter of the 23d instant, transmitting a sworn statement of service, together with an account in blank dated the 1st instant, in favor of Charles Ewing for services rendered the Great and Little Osages under his contract of February 14, 1877, and directing me to cause an examination to be made of the affidavit, and if, in my judgment, the services rendered were such as were contemplated by the contract, to state an account in favor of Mr. Ewing for the proper amount, and submit the same for approval in the usual manner.

Before going into an examination of the affidavit in order to satisfy myself whether the services rendered were such as were contemplated by the contract, I desire to call your attention to section 2103 of the United States Revised Statutes, and the contract made between the Osage Nation and Mr. Charles Ewing. Paragraph 5 of section 2103 of the United States Statutes provides: "It [the contract] shall have a fixed limited time to run, which shall be distinctly stated."

The contract made between the representatives of the Osage Nation and Charles Ewing, after enumerating the different services to be performed by Ewing, provides, "and generally to do and perform all other things that an attorney may properly do and perform for the period of three years from this date," &c. The date of the contract is 14th of February, 1877, and, in my opinion, it expired February 13, 1880, and no payment or allowance can be made for *services claimed to have been performed under it after that date.*

In addition to the above, I desire to call the attention of the department to the fact that although the contract was approved by my predecessor, it is, in my opinion, not valid, the parties making the same not being those authorized by the Osage Council to act for the tribe. The resolution of the Osage Council, under which it is claimed the contract was made, appoints Joseph Paw-ne-no-pash-e, Big Chief, Hard Rope, Chetopah, and August Captain delegates and representatives of the nation, &c. The contract made with Ewing is signed by Joseph Paw-ne-no-pash-e, Black Dog, and August Captain, for and in behalf of the nation. Two of these are only mentioned by name in the resolution of the council, but these two not being a majority of the delegates, they had no power to bind the Osage Nation. At the end of the contract it is stated "that after the appointment of the delegation above named, and before its departure, Chetopah sickened and died, and Strike Axe was appointed in his place, but from sickness was unable to accompany the delegation; that Big Chief being sick, Black Dog was appointed to fill his place, and that Hard Rope being sick could not accompany the delegation"; but there is nothing with the contract to show that the change in the personnel of the delegation was approved by the Osage council.

Another clause in the contract provides, "that the parties of the first part hereby agree that the Osage National Council will issue a requisition on the honorable Secretary of the Interior, and do and perform any other act that may be necessary in the premises, and in case the Osage Nation should, for three months, fail to perform any of the stipulations herein, the Secretary of the Interior is hereby empowered to make full payments under this agreement."

While it is true that the Osage National Council cannot issue a requisition on you for any sum that may be due Mr. Ewing, yet it can, as has often been the case, make a written request or recommendation for the payment of the amount which may be due Mr. Ewing, and therefore, even should it be decided that the parties making the contract were legally authorized to do so, and that the contract has not expired by limitation, I hold that no account can be stated or allowance made by me or the department until it is shown that Mr. Ewing has applied to the Osage National Council for the amount claimed to be due and has been refused payment.

For the above reason, I return herewith the affidavit of Mr. Ewing, for such action as the department may desire to take.

Very respectfully,

H. PRICE,  
*Commissioner.*

The Hon. SECRETARY OF THE INTERIOR.

No. 26.

DEPARTMENT OF THE INTERIOR,  
Washington, July 11, 1881.

SIR: I have examined your report of the 26th of May last upon the claim of Charles Ewing for services rendered the Great and Little Osage Indians under his contract of February 14, 1877, as stated in his account filed April 13, 1881, and forwarded to your office with my letter of May 23 last. You declined to state the account in favor of Mr. Ewing for the following reasons:

1st. Because you are of opinion that the contract by its terms expired February 13, 1880.

2d. Because in your opinion the contract was not duly executed, it not having been signed by a majority of the parties named in a resolution adopted by the National Council of the Great and Little Osage Indians December 9, 1876, and thereby generally authorized to act in behalf of said nation in relation to matters between the nation and the United States.

3d. Because it does not appear that the Osage National Council has requested the Secretary of the Interior to pay the sum of money claimed by Ewing, or that Ewing has taken any steps to secure such request.

As regards the second objection, while as an original proposition there may possibly have been some question as to the due execution of the contract, that point must now be considered as definitely settled, and not open for reconsideration by your office or this department. The contract was approved by the Commissioner of Indian Affairs December 9, and by my predecessor December 23, 1879. The question you raise was necessarily one of the very points considered by them before approving the contract. Furthermore, an account for fees under this contract was certified by my predecessor June 30, and allowed by the Treasury Department July 16, 1880.

The question as to the due execution of this contract was raised before the accounting officers of the Treasury Department after the claim was certified by my predecessor, and in a letter from your office under date of July 7, 1880, addressed to the Second Comptroller of the Treasury, I find the following statement: "In regard to the authority of the persons named in said contract made with Charles Ewing, of date February 14, 1877, I have to state that at that date the said Joseph Paw-ne-no pashe, Black Dog, and Augustus Captain were a delegation of Indians empowered to act for the Great and Little Osage Indians, in all respects in regard to the lands and of the interests of said tribes, and were then duly recognized as such by the Secretary of the Interior and by the Indian Department, and at the date of said contract it was decided by the Secretary of the Interior and the Commissioner of Indian Affairs that they had power to enter into said contract on behalf of the said Great and Little Osage Indians.

In a letter of July 6, 1880, from your office to the Second Comptroller of the Treasury, I also find the following statement:

"2d. The persons who signed the contract as parties of the first part, with said Ewing, were well known to this department in the management of Osage affairs.

"3d. In June, 1877, these men appeared at this department and were recognized and received by the Commissioner of Indian Affairs. There has never been any question in this department as to their identity, nor as to their authority in the premises, all of which was duly considered by the honorable Secretary of the Interior and the Commissioner, who at the time approved the power of attorney and contract executed by them with said Ewing."

It will, therefore, be seen that this question was fully considered both by the Commissioner of Indian Affairs and the Secretary of the Interior, as well as by the accounting officers of the Treasury Department, upon all the facts relating thereto then in the case.

There being no new facts to give the present officers of this department jurisdiction to reconsider the matter, the question must be considered as already finally disposed of.

The question constituting your third objection was also considered by your office, and necessarily by my predecessor in certifying the claim to the Treasury Department for payment; and it was also raised before the accounting officers of the Treasury, and overruled by the Second Comptroller.

I find in a letter from your office to the Second Auditor, dated July 1, 1880, the following statement: "The proviso in Ewing's contract for the issuance of a requisition by the Osages for his fee is a nullity, inasmuch as the Osages cannot lawfully draw a requisition on their funds, all of which are expended solely under or by orders of this department."

In letter of July 2, 1880, from the Second Auditor to the Second Comptroller, it was held that it might well be supposed that before approving the account the Secretary would require the assent of the Osage Indians to the payment of the claim, "as he approved the contract containing the clause declared by the Acting Commissioner of Indian Affairs to be a nullity."

It would seem that this objection was overruled by the Second Comptroller, who

allowed the claim of Mr. Ewing, July 16, 1880, notwithstanding the objections of the Second Auditor.

Clearly if the absence of a requisition upon or request to the Secretary of the Interior from the Osage national council was no objection to the payment of that claim, it cannot constitute a bar to the present demand, provided it is in other respects valid. It does not appear that any objections ever have been raised by the Indians against the payment to Mr. Ewing of the fee agreed upon. The Indians required his services as attorney, accepted them, and have received the benefit resulting therefrom. As I understand the contract, the payment of Mr. Ewing's fee is not conditioned upon his securing a request from the Osage national council for their payment, or upon his applying to the Indians to make such request. The Indians agreed to make such requisition; but it was in no manner agreed that the fee of Mr. Ewing should not be payable except upon a requisition or request of the Indians.

In regard to the first objection I have to say that it is undoubtedly true that the time limited within and during which Mr. Ewing was required to render professional services to the Indians was three years from and after the 14th day of February, 1877. This point was definitely settled by the Second Comptroller in his letter of July 13, 1880, to the Second Auditor, in which decision I fully concur. But in this respect the present claim is in exactly the same condition as the one that was allowed July 16, 1880; and if the amount of money then claimed by Mr. Ewing was legally due by virtue of said contract and its payment was authorized by the act of June 16, 1880 (Pamphlet Laws, 291), then a claim for a percentage upon a further amount properly due said Indians February 14, 1877, and now passed to their credit, cannot be denied without a reversal of the various decisions resulting in the allowance of the former claim.

I agree with the conclusion of the Second Comptroller as expressed in his letter of July 13, 1880, to the Second Auditor, as to the proper construction of the contract. It was undoubtedly the object of the Osages in making the contract to secure the professional services of Mr. Ewing as an attorney and counselor at law. The time within which he was to act as their attorney was limited to three years, and he agreed during that time "faithfully and intelligently to perform any and all the duties that might be imposed upon him by reason of the matters set forth in the contract." Thus he obligated himself, and was bound to render his services to the Indians for and during the period mentioned. As to his duties, the contract states that he had that day, February 14, 1877, been constituted and appointed the attorney of the Osage Nation "in all matters that may be submitted to him by said nation," and that the nation had particularly charged him:

"1st. To review the accounts of the said nation with the United States for and on account of the sale of the Osage lands in the State of Kansas.

"2d. To secure the payment from the United States for the sixteenth and thirty-sixth section in each of the townships embraced in the public surveys of Osage lands in the State of Kansas that were granted by the United States to said State for school purposes, with interest thereon at the rate of five (5) per cent. per annum from the date of final survey of each township until the date of the allowance and payment of this claim.

"3d. To secure the payment to the members of the Clermont Band of Osages of the money due them under the 9th article of the treaty of March 2, 1839.

"4th. To secure the granting of certain pensions.

"5th. To secure the issuance of patents to the Osages for their lands in the Indian Territory; and generally to do and perform all other things that an attorney may properly do and perform, for the period of three years from the date of the contract."

Ewing was therefore the general attorney for said nation, bound to render services as to any matters that the Indians might properly submit to him, and particularly as to the matters specially placed in his charge. His contract, therefore, was to render services as to those matters for three years, and not to accomplish within that time what the Indians desired. He did not guarantee that any of the matters as to which he was specifically charged, or which should be submitted to him, should be accomplished within three years, nor that they should ever be accomplished. He was simply under obligations to render services faithfully and intelligently in endeavoring to accomplish those matters. The only contingency in the whole case was as to his fee. The Osages agreed to pay him for his services seven and a half per centum "of all moneys that said party of the second part may hereafter cause to be paid to said nation, or any band thereof, or of any moneys that he may cause to be passed to the credit of said nation in the Treasury of the United States, which said moneys are now due, or should in law or justice be placed to said credit."

Now, clearly, if he should never cause any moneys to be paid to the Indians or placed to their credit, there would be nothing out of which to pay his fee, and this is the only contingency in the case. There was no agreement that the fee should become due within any specified time; but whenever thereafter Ewing should cause to be paid to the Indians or passed to their credit any moneys, except such as had arisen



from the sale of lands under the first article of the treaty of September 20, 1865 (15 Stats., 687), then the fee for services rendered within the prescribed three years would be due and payable.

The view I take of the contract is that the Indians could not demand service of Ewing after the expiration of the limited period, nor could Ewing exact any fee for services rendered after the expiration of that time; but the seven and a half per cent. mentioned in the contract is in payment for general and particular services rendered the Indians during three years from and after the 14th day of February, 1877. It does not affect the rights of Ewing that the moneys were not passed to the credit of the Indians prior to the expiration of the three years; provided, that within the intent and meaning of the contract, he caused them to be paid or credited.

On this point the Second Comptroller said: "If he discharged all his duties during the whole time specified, his obligations under the contract were at an end, and his contingent right to future payment became fixed and vested."

Again, "he is not debarred because the money did not become due him within the three years the contract was to run. Whatever he might have recovered as the reasonable value of his services may become due as well after the expiration of that time as before." (Letter of July 13, 1880, above referred to.)

The next question for consideration is, Did Mr. Ewing render services in pursuance of his obligation within the time limited?

In an affidavit, sworn to July 12, 1880, Mr. Ewing alleges that immediately after the execution of said contract he reviewed the accounts of the said nation with the United States for and on account of the sale of the Osage land in the State of Kansas, and that from the date of said contract, during all the said period of three years he industriously, faithfully, and intelligently prosecuted on behalf of the said Great and Little Osage Nation, each, every, and all of said matters and business mentioned in the contract, as intended thereby, and in all respects complied on his part with the said contract.

In an affidavit of July 1, 1880, he swore that the services performed were those of an attorney-at-law; that in the winter of 1877-'78 he was engaged in collecting the data on which his clients' case was founded, and in the study of the treaties, laws, and practice of the government in such cases; that on November 27, 1878, he filed with the Secretary of the Interior his petition setting forth the claims of his clients, and the law and facts relied upon in support thereof; that in December, 1878, and from time to time thereafter he was engaged in the discussion of his said petition in the Bureau of Indian Affairs; that in January, 1879, he prepared a bill to be submitted to Congress authorizing the settlement of the claims of his clients; that he caused said bill together with a petition to be introduced in the Senate and House of Representatives; that he prepared and printed a full compilation of both the laws and the treaties in support of said petition and bill, and filed them with the proper committees of Congress; that he filed with the proper committees an argument in support of said petition and bill; and he shows the performance of divers and sundry other proper professional services on his part in relation to said bill. He further alleges in said affidavit that during the winter of 1879-'80, the bill above mentioned having failed of passage, he had it again introduced in Congress, renewed his arguments, both written and oral, and followed the matter vigilantly through all its various stages, and finally secured its passage and approval, resulting in the act of June 16, 1880.

These, clearly, were services rendered in pursuance of the terms of his contract.

Thus it appears that he did render valuable services during said three years in reviewing and ascertaining the condition of the accounts between the United States and said Indians, and as to other matters with which he was charged; and, finding it necessary to secure legislation, in order to accomplish for the Indians what was desired by them, he prepared and had introduced a bill in Congress authorizing and directing the Secretary of the Interior to cause an account to be stated of the number of acres of the Osage lands in the State of Kansas that had in any way been alienated by the United States either by the act of January 29, 1861, or since the creation of the trust for the sale of those lands by the treaty between the United States and the Great and Little Osage Indians proclaimed January 21, 1867 (treaty of September 29, 1865), and the money received by the United States on account of the sales of such lands, appropriating money to settle the accounts, &c., and he did what an attorney might lawfully do in promoting the passage of that bill, which has become the act of June 16, 1880, by virtue of which the money, of which Ewing now demands 7½ per cent., was passed to the credit of said Indians. The Indians, therefore, are reaping the benefits of Mr. Ewing's services; and, in view of what he did in securing the passage of the act of June 16, 1880, and of the sworn statements contained in his affidavit of May 18, 1881, accompanying his account, it is clear that the money of which he claims a percentage was caused to be passed to the credit of said Indians by said Ewing within the intent and meaning of the contract.

The next question is as to the amount from which the seven and a half per cent. is to be taken.



The contract in terms limits the seven and half per centum to moneys that at the date of the contract were due, or should in law or justice be placed to the credit of said Indians. "Which said moneys are now due, or should in law or justice be placed to said credit," are the words of the contract. It follows, therefore, that Mr. Ewing is not entitled to any part of the funds becoming due to said Indians on account of any transaction or sales of lands after the date of the contract. The percentage must be calculated upon moneys placed to the credit of the Indians which were justly due February 14, 1877.

The present claim being for a percentage of money passed to the credit of said Indians under the act of June 16, 1880, on account of lands sold under the second article of the treaty of September 29, 1865, you will state Mr. Ewing's account upon the basis of the amount justly due at the date of his contract, in accordance with the views herein expressed, taking care not to include in this or any other account under said contract any moneys belonging to the civilization fund, which is expressly excepted from the approval of the contract, and submit it for certification to the Treasury Department in the usual manner.

The papers submitted with your report are herewith returned.

Very respectfully,

S. J. KIRKWOOD,  
Secretary.

THE COMMISSIONER OF INDIAN AFFAIRS.

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No. 27.

CHARLES EWING, attorney at law, of Washington, D. C., being first duly sworn deposes and says:

That in addition to the professional services heretofore performed by him for and on account of the Great and Little Osage Nation of Indians, as described by him in his affidavit of July 1, 1880, which said affidavit is now on file in the proper office of the Federal Government, he has continued to perform further necessary and valuable services for the said Osage Nation, as follows:

Promptly on securing the passage by Congress and the approval by the President of the act of June 16, 1880, entitled "An act to carry into effect the second and sixteenth articles of the treaty between the United States and the Great and Little Osage Indians, proclaimed January 21, 1867," he set about collecting and arranging data necessary for a proper adjustment of the accounts of Osage lands, other than the 16th and 36th sections alienated by the United States under the provisions of the said treaty and the act of July 15, 1870, and in this matter expended considerable of his own time, and made himself liable for a considerable sum on account of the employment of skilled professional assistance. Having prepared himself as fully as possible for an intelligent revision of the accounts named, he applied, on the 13th of October, 1880, to the Secretary of the Interior for and secured an order for a statement from the General Land Office of the number of acres of Osage lands alienated in each quarter from the date of the treaty aforesaid up to and including the third quarter of 1880. He also applied for and procured an order from the Secretary of the Interior for a statement from the Bureau of Indian Affairs of the number, date, and amount, in dollars and cents, of warrants received by that bureau on account of the said lands; the amount of Osage moneys annually covered into the Treasury of the United States, and the amount of interest annually received by the bureau thereon; the cost of survey; the cost of sales, and the expenditures made from said funds under requisitions issued in pursuance of existing laws and treaties.

In the preparation of these reports he appeared in person or by deputy for the Osage's whenever and wherever called on, or it was necessary for him to do so, *i. e.*, almost daily during the months of October, November, and December, 1880; and early in January, 1881, he received a communication from the Secretary of the Interior, dated December 31, 1880, transmitting to him as the attorney of the Osage Nation an official copy of the report of the Commissioner of Indian Affairs, dated December 14, 1880, and an official copy of the report of the Commissioner of the General Land Office, dated December 23, 1880. These reports showed that \$4,417,591.05 had been received as the result of the alienation of Osage lands in the time reported on; that \$1,979,364.44 had been expended, and that there was then to the credit of said Osages in the United States Treasury the sum of \$2,438,226.61.

That from the date of the receipt of said communications to the 5th February, 1881, *i. e.*, for more than a month, he and his assistants were diligently engaged in a revision of said accounts, which they carefully scrutinized in each item. That on the date last named he submitted to the Secretary of the Interior a report, in writing, in accordance with the official data collected by him, in which was shown that there was due the Osages, over and above the sum for which they had received credit in the Interior and Treasury Departments, a balance of \$617,135.42. That on the receipt of this report by the Secretary of the Interior it was referred to the accounting officer of the Bureau of

Indian Affairs. That much of his time was occupied in the revision of the data upon which the reports of the two bureaus were based, and upon which he had based his report in behalf of the Osages. That he had procured a new report from the General Land Office, based on a long and careful scrutiny of all the returns, by quarters, for over ten years past, of the local land offices at which the Osage lands were sold; that he compiled the appropriations of interest on the Osage treasury 5 per cent. credit, and procured an official statement from the Treasury of the United States of the yearly interest passed to the credit of the trustee of the Osage Fund, compiled from the warrants drawn for the same, and also the total annual receipts at the Treasury of the proceeds of the sales of the Osage lands, and a statement from the same source of the total sum paid for the survey of the Osage lands.

That with this corrected data he again revised and corrected his statement of differences between the United States and his clients, and as far as requested, or permitted, supervised the correction of errors in the original report of the Office of Indian Affairs; that by reason of these services, and due solely to his attorneyship, the Bureau of Indian Affairs, on the 9th day of March, 1881, submitted an amended report to the Secretary of the Interior, showing that the accounts of the alienation of Osage lands in the various offices of the government were not correct; that the first official statement of the Bureau of Indian Affairs was erroneous, and that there was due to the Osages, on account of the alienation of their lands, from the date of the treaty aforesaid to the end of the third quarter of 1880, the sum of \$230,771.71 more than appeared on the official records of the General Land Office or the Bureau of Indian Affairs or the Treasury Department; that he appeared as the attorney of the Osages before the officials of the Interior Department, in support of his clients' right to have said sum of \$230,771.71 certified by the Secretary of the Interior, in pursuance of the act of June 16, 1880, to the Secretary of the Treasury, and placed to the credit of his clients, as provided for by said treaty of 1865-7; that upon certifying of said sum to the Secretary of the Treasury, he reviewed said amended report in the warrant division of the Treasury Department; that the proper action of this office being had, and the account being referred to the office of the Second Auditor of the treasury, he here again appeared for his clients, by his associate attorney, and again reargued and discussed, day by day, during nearly three weeks, the law and facts involved in the settlement, and the long complicated account of sales of lands during each quarter of the past eleven years, the costs of survey, the date of their payments and their proper entry in the accounts, the questions of interest due on quarterly sales of lands, and expenditures by the government, and the proper charges made against the Osages on account of the payment for Cherokee lands occupied by Indians other than the Osages, and on account of the various appropriations made by Congress out of the Osage treasury credit.

That he then appeared at divers and sundry times before the Second Comptroller of the Treasury, urging a change in the settlement made by the Auditor, and here again was met by difficult questions that involved a review of the whole question of the character of the audit required by the act of June 16, 1880, which he discussed at various times and at great length with the Second Comptroller and the officers of his bureau having charge of the accounts; the result of which services, after two weeks, was the return of the account to the Department of the Interior for revision.

From the date of the receipt of said account back at the department, down to the 17th instant, he has, in person, and by his associates, been in daily attendance on the case, and having submitted an account drawn in strict conformity with both the letter and the spirit of the act of June 16, 1880, secured a judgment in favor of his clients in the sum of \$236,083.88.

That he has herein discharged his full duty under his power of attorney and contract with his clients, and is legally and justly entitled to the compensation agreed upon between his clients and himself, and approved by the Commissioner of Indian Affairs and the Secretary of the Interior, as required by law.

And further deponent saith not.

CHARLES EWING,

*Attorney for the Great and Little Osage Nation of Indians.*

Subscribed and sworn to before me this 18th day of May, 1881.

GEO. M. LOCKWOOD,

*Notary Public.*

[First indorsement.]

Based on the within affidavit, under section 2104, Revised Statutes, and in compliance with the directions of the honorable Secretary of the Interior, as expressed in his letter of July 11, 1881, I have caused this account to be stated in favor of Charles Ewing, on what is termed his contract, although my views, as expressed in my letter of May 26, 1881, to honorable Secretary of the Interior, remain the same as at that time.

H. PRICE,

*Commissioner.*

OFFICE OF INDIAN AFFAIRS, *September 5, 1881.*

[Second indorsement.]

OFFICE OF THE SECRETARY,  
Washington, D. C., September 12, 1881.

Based on the within affidavit, under section 2104 Revised Statutes, it is hereby determined and decided that the contract mentioned in said affidavit has been complied with and fulfilled on the part of the said Charles Ewing.

S. J. KIRKWOOD,  
Secretary.

No. 28.

*The United States to Charles Ewing, Dr.*

For  $7\frac{1}{2}$  per centum on the sum found due the Osage tribe of Indians, and placed to their credit under appropriation warrant No. 887,\* dated May 27, 1881, \$236,083.88, in accordance with the opinions of the honorable Secretary of the Interior, dated July 11, 1881, a copy of which is herewith inclosed, and the same being based upon the terms contained in the contract between the claimant and said Indians, dated February 14, 1877, filed with settlement No. 1542 of 1880..... \$17,706 29

Account stated in Indian office.

E. N. PUGH, Clerk.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,  
September 7, 1881.

The within account of Charles Ewing, for fees allowed by the Secretary of the Interior under contract with the Osage Indians, dated February 14, 1877, amounting to \$17,706.29, allowed by this office for the sum claimed, and referred to the Second Auditor of the Treasury for settlement, charging appropriation "Payment to the Osage Indians for ceded lands embraced in the Osage reservation in the State of Kansas," \$17,706.29.

Payment to be made to claimant present.

H. PRICE, Commissioner.

No. 29.

TREASURY DEPARTMENT, SECOND AUDITOR'S OFFICE,  
Washington, D. C., October 5, 1881.

SIR: The claim for \$17,706.29, in favor of Charles Ewing, received from the Commissioner of Indian Affairs on the 13th day of September, 1881, is herewith reported not allowed.

This is the second installment of pay claimed by Mr. Ewing for services rendered under a contract with the Osage Indians, dated February 14, 1877. The first installment was for \$59,452.60, and, notwithstanding objections made by me, passed into a settlement and was paid in accordance with the rulings of the Second Comptroller.

That contract purports to have been executed according to the requirements of section 2103, Revised Statutes. Accompanying it, and attached thereto, is a power of attorney, bearing even date therewith, in the usual form, to Mr. Ewing, from the same parties that executed the contract on the part of the Osage Nation. The two papers are part of one and the same agreement. The Osage Nation could not execute a valid power of attorney, except in pursuance of the statutory provisions, and as a separate instrument it would have been void.

The remarks in my letter of July 9, 1880, transmitting the claim of \$59,452.60, so far as they imply any validity in this power of attorney as a separate instrument, the probable or possible rights of Mr. Ewing growing out of it, should be modified to conform with the views above expressed.

The last-mentioned claim was forwarded to this office for settlement on the 30th day of June, 1880. It had not then been well considered by the administrative office. The sworn statement required by section 2104 had not then been filed, nor does it appear that any such statement was in existence, notwithstanding the next succeeding section of the statute declares that the person receiving money "contrary to the provisions of the two preceding sections, and his aiders and abettors, shall, in addition to

\*See Exhibit E.

the forfeiture of such sum, be punishable by imprisonment for not less than six months, and by a fine of not less than one thousand dollars." Attention having been called to the omission, an affidavit dated July 1, 1880, was filed, intended to remedy the defect.

In a letter of July 9, 1880, to the Second Comptroller, I gave some reasons why, in my judgment, the claim should not be paid. The same reasons apply to the present claim. The papers do not show that Mr. Ewing had then, or has ever, performed the services he had agreed to perform. It cannot be doubted that the Indians supposed he was to secure for them the full benefits specified in the five different objects toward which his efforts were to be specially directed. They had something else in view besides getting money paid into the Treasury for their benefit.

The Clermont band, who are a part of the Osage Nation, wanted the money due them under the ninth article of the treaty of March 2, 1839.

Certain families dependent upon the Osages wanted pensions for which claims were on file in the Indian office.

The nation wanted a patent for lands it owned in the Indian Territory.

The Indians expected all these enumerated wants would be attained; and I believe a true construction of the contract meets such reasonable expectations. Contracts of this character are regulated by statute for the protection of these "defenseless people," and should be construed strictly with that end in view. Mr. Ewing is an intelligent attorney. He drew the contract, and on that account he should be held to a strict performance of the obligations he had taken upon himself. I see no such great merit in the claim as entitles it to special favor.

What are the recitals of the agreement? And what does Mr. Ewing agree to do?

It is recited that Black Dog and two other chiefs had been appointed delegates and representatives to Washington to look after the nation and secure certain enumerated benefits, and that they were "fully authorized to represent and treat of all the interests of the nation." It is then alleged that they "have this day constituted and appointed the party of the second part the attorney of the Osage Nation in all matters that may be submitted to him by said nation, and particularly have charged the said attorney as follows, to wit:"

1st. To review the accounts of the nation, &c.

2d. Secure the payment for certain Kansas lands.

3d. The payment to the Clermont band of money due under treaty.

4th. To secure the granting of certain pensions.

5th. To secure the granting of a patent for land, and generally to do and perform all other things, &c., "for three years from this date." It is also declared, "and whereas the party of the second part has agreed faithfully and intelligently to perform any and all the duties that may be imposed upon him by reason of the matters herein set forth." What was he to perform? He was to review certain accounts—to secure payment—to secure the granting of pensions—to secure the granting of a patent. No doubt three years was deemed ample time for the accomplishment of all these objects. If the time was insufficient it is the claimant's misfortune. He was charged with the duty of securing these specified benefits. It was a duty imposed upon him, and he agreed to perform it. The pensions have not been procured, and the patent to the Little Osage Nation has not been granted, nor has payment been made to members of the Clermont band of Osages of the money due under treaty of March 2, 1839. The contract on the part of the claimant has not been performed, and he is not entitled to compensation.

The honorable Secretary of the Interior, in his letter of July 11, 1881, directing the Commissioner of Indian Affairs to state the account under consideration, and submit it for certification to the Treasury Department, has given the reasons for his action, which appear to me insufficient to justify the direction he gave. He says, among other things: "His contract therefore was to render services as to those matters for three years, and not to accomplish within that time what the Indians desired. He did not guarantee that any of the matters, as to which he was specifically charged, or which should be submitted to him, should be accomplished within three years, nor that they should ever be accomplished. He was simply under obligations to render services faithfully and intelligently in endeavoring to accomplish those matters. The only contingency in the whole case was as to his fee."

I confess to no little surprise upon reading this opinion as expressed by the Secretary. Let us for a moment consider the contract in this light, and in view of the surrounding circumstances at the time of its execution.

Under treaty stipulations, the United States had become indebted to the Osage Nation for certain lands in the State of Kansas. The government was dilatory in making payment. The amount was large but it was certain to be paid at no very distant period. It did not require the services of an attorney. A little attention by the Secretary of the Interior would be and doubtless was far more effective. Mr. Ewing knew this, as did every intelligent person conversant with the facts. The certainty of payment at some future day was perfectly apparent. With the ostensible purpose of

hastening payment, he induced the Indians to enter into an agreement with him, the substance of which is that he, Ewing, should for three years act as their attorney at Washington and do what he could to hasten the payment of the money due from the United States. As a compensation for such services he was to receive  $7\frac{1}{2}$  per cent. of all moneys then due the nation, or any band thereof, that he might cause to be paid, at any time thereafter to the nation or into the Treasury of the United States to their credit. Does any sensible man believe the Osage Nation should have entered into such an agreement? Yet, that is just what the honorable Secretary of the Interior construes the contract of February 14, 1877, to be, in substance and effect. Such a contract would be unconscionable and would not be upheld and enforced by the courts. If the Secretary has construed the agreement correctly, why was anything said about securing pensions and a patent of lands? Were these things inserted as a make-weight to deceive the Indians and induce them to enter into an unconscionable agreement? Were they not rather inserted for the attainment of substantial benefits, and the claimant charged with the duty of securing such benefits?

Suppose, however, that the true construction of the contract is not that the benefits specially enumerated shall all be secured to the Indians, but that the claimant shall give his time and professional services as an attorney for three years in reasonable efforts to secure those benefits. Did he do that? Does the contract, so construed, appear to have been fully performed on his part? There is not a particle of legal evidence that he ever made any efforts to secure to the nation the benefits of either of the last three specified objects. In his affidavit of July 1, 1880, he states what he did do.

The first service there shown to have been rendered commenced nearly a year after the date of the contract. "In the winter of 1877-'78 he was engaged in collecting data," \* \* \* "and in a study of the treaties, laws, and practice of the government." Nothing further appears to have been done until November 27, 1878, when more than a year and nine months of his three years had expired. He then "filed with the Secretary of the Interior his petition setting forth the claims of his clients, and the law and facts." From March 1, 1879, until the following winter, no services are shown. That sworn statement was intended to be in compliance with the requirement of section 2104 of the Revised Statutes, and doubtless recites in detail all the services that had then been performed. On July 12, 1880, when objections had been made to the sufficiency of the proof of services, Mr. Ewing made and filed another affidavit, and, in general terms, swears, in substance, that up to that date he had industriously, faithfully, and intelligently prosecuted, on behalf of the Great and Little Osage Nation, each and every and all of the matters and business as intended by said contract. Excepting one thing, to wit, that he reviewed the accounts of said nation with the United States, he omits to show, as required by the statute, "each particular act of service under the contract, giving date and fact in detail." Such omission is significant. In view of the requirement of the statute, the presumption is conclusive that he stated in his affidavit of July 1, with the one possible exception, each and every act performed by him. His sworn statement, in general terms, that he had done all that was required of him, will not do. It would not be received in any court or tribunal as satisfactory evidence of the facts sought to be established. Much less can it be received in this case, as the statute requires that such statement shall show each particular act of service, with date and fact in detail. It will be perceived from these proofs that the claimant devoted but a small portion of the three years to the business of his Indian clients.

Your attention is invited to a written statement of facts dated September 27, 1881, signed by the chief of the bookkeeper's division in this office, and herewith transmitted, from which it appears that the sum of \$236,033.88, upon which it is proposed to pay the claimant  $7\frac{1}{2}$  per cent., includes \$70,096.12 due to the Osage Indians from the Kansas Indians, which would have been paid to the Osages without the assistance of any attorney. If anything is paid to the claimant, he is surely not entitled to the percentage upon that \$70,096.12. It can hardly be pretended that he rendered any services in securing payment of that money. There was no time after that indebtedness accrued when it could be discharged until February last, when the Kansas Indians became possessed of funds sufficient for its payment. It was then paid by the action of the government without the solicitation or intervention of any attorney or other person.

This claim did not meet the approval of the Commissioner of Indian Affairs. It is certified here by order of the honorable Secretary of the Interior, notwithstanding the objections of the Commissioner, as stated in his letter of May 26, 1881.

I have not thought it necessary to examine technical questions that might affect the validity of the claim, as it appears to me to be wholly devoid of equity and merit.

If you adhere to the views expressed in your letter of July 13, 1880, the ministerial duty alone will remain to me of recording such requisition as you shall direct.

Very respectfully,

O. FERRISS, Auditor.

Hon. W. W. UPTON,  
Second Comptroller.



No. 30.

SECOND AUDITOR'S OFFICE,  
September 27, 1881.

The sum of \$236,083.88, upon which it is proposed to pay Charles Ewing 7½ per cent. includes \$70,096.12 due to the Osage Indians, from the Kansas Indians, which would have been paid to the Osages in due course without the intervention of an attorney. The facts in the case are, briefly, as follows:

The Cherokee Indians sold a tract of land to the Osages, the value of which, \$921,748.80, was taken from the Osage funds and credited to the Cherokee funds, March 24, 1875, by authority of the act of March 3, 1873 (17 Stat., 538). The Kansas Indians were settled upon the northeast corner of this tract of land, in accordance with the act of June 5, 1872 (17 Stat., 229), which provides that the Osage Indians shall permit the Kansas Indians to settle on the land referred to, said land "to be paid for by said Kansas tribe of Indians out of the proceeds of their lands in Kansas."

When a settlement was made with the Cherokees (March 24, 1875), the Kansas Indians had no funds from which the value of the lands occupied by them (\$70,096.12) could be taken. The price of the whole tract purchased from the Cherokees was therefore taken from the Osage funds,\* and the Kansas Indians thereupon became indebted to the Osages in the sum of \$70,096.12.

The Osages would have reimbursed, as a matter of course, as soon as the proceeds of the lands of the Kansas Indians became sufficient for that purpose, even if no contract had been made with General Ewing.

THOS. RATHBONE,  
Chief Bookkeeper's Division, Second Auditor's Office.

No. 31.

SIR: In the matter of the fee of General Charles Ewing, to say:

That under the authority of the act of June 16, 1880, which was framed by General Charles Ewing, and the passage of which was secured by the efforts of him and his associates, the sum of \$236,083.88 was placed to the credit of the Osages in the Treasury of the United States in addition to what had been placed there. This amount, as provided for in said act, was placed there on the certificate of the Secretary of the Interior (the only person authorized to make such certificate), and he certifies that this is the difference between the amount placed to the credit of the Osages, and that would have been due said trust had the treaty faithfully been executed. On this amount which he had thus "caused to be passed to the credit of said nation, in the Treasury of the United States," according to the language of his contract, he demands his 7½ per cent. fee, and his account for such fee on said amount has been sent down by the Interior Department.

On what pretext is it sought to deprive him of any part of it. By the terms of the Osage treaty their lands in Kansas were to be sold and the money received therefrom, "as it accrued," was to be placed to the credit of the Osages, in the Treasury of the United States. This was the trust to be executed, and the transaction required both the placing the money to their credit as a separate fund in the Treasury.

By the act admitting the State of Kansas to the Union, the sixteenth and thirty-sixth sections were declared to be school lands, but Indian reservations were not then included in its operation. By the treaty, all of the Osage lands in Kansas were provided to be sold. By subsequent act these school sections were, in violation of the treaty and the trust, given to the State of Kansas. By the act of June 16, which re-enacted the treaty, the Osages had placed to their credit, under certificate of the Secretary, the amount that would have been due the trust had they been sold under the treaty.

By the sixteenth article of the Osage treaty, there was authorized the alienation of an amount required to purchase a suitable home for another tribe, the Kansas.

This was, also, a violation of the treaty and the trust. In this way a portion of the proceeds of the sales of the lands of the Osages, instead of being placed to their credit as they accrued, as the treaty directed, were alienated in violation of the trust. By the terms of this act of June 16, 1880, it was provided that the terms of the treaty should be re-enacted, and an amount was therein appropriated to indemnify the trust. Under its provisions the Secretary of the Interior certifies this amount due the Osages, to wit, \$236,083.88, being the difference as settlement required by the trust, and it has passed to their credit as the trust requires. The Osages, so far as they are concerned, had no transactions, and no debtor or creditor transactions with any other tribe, but had there been, the act of June 16 changes it.

\*See Exhibit F.



The argument of the Second Auditor, that if it had not been so paid it might have been paid in some other way without the intervention of this act or the attorney, is answered:

1st. Because it never was so paid.

2d. Because it was paid under General Ewing's act, the Second Auditor himself so settling it.

The theory that the transfer of the \$70,096 was a mere error in bookkeeping is not well founded, for the transaction, though a violation of the trust, like the alienation of the school sections, was authorized by law. This alienation and violation of treaty existed at the time the Osages entered into the contract with General Ewing. This amount was due the trust, and ought to have been placed to their credit in the Treasury "as it accrued."

This amount was due the trust when the act of June 16, 1880, was passed. The restoration of this difference, and its appropriation, was clearly provided for in the act. For a long period this alienation and wrong to the trust had existed. No adequate remedy had been provided until that act provided a remedy. That act is the latest law on the subject. Should it conflict in any way with any other law, that other law is to that extent modified. It specifically provides this mode of remedying this wrong and of faithfully executing the trust, and is therefore the only legal remedy.

Very respectfully,

WM. A. PHILLIPS,  
*Attorney for General Ewing.*

Hon. W. W. UPTON,  
*Second Comptroller of the Treasury.*

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No. 32.

*Memorandum as to credit of cost of Kaw lands in Osage settlement and Ewing's right to fee thereon.*

It has been settled by the proper law officer of the Treasury that the Secretary of the Interior alone has auditing powers in the matter of the settlement of Osage land accounts under the act of June 16, 1880.

This officer has decided, under said act, that there was due the Osages from the *United States*, the sum of \$70,096.12 on account of moneys arising from the sale of Osage lands in Kansas that had been illegally applied to the purchase of lands for the Kaw Indians.

Now, if the decision of the law officer of the Treasury as to the sole jurisdiction of the Secretary of the Interior in the settlements under the act of June 16, 1880, is sound—and I don't think any sound, unbiased mind can doubt it—then it is not competent for any officer of the Treasury to reverse the Secretary on the point under consideration, or in any way reverse his decision. It follows that it is conclusively established that the *United States* is in debt to the Osages for the \$70,096.12 named; and consequently the Osages and their attorney don't know the Kawes—and the Kawes can't be made a party in this case.

This being true what relevancy to this settlement has the fact (if it be a fact) that the Kaw Indians now have money available for the payment of the lands they now occupy in the Indian Territory? It hasn't any. It is merely an afterthought, an unwarranted shifting of debit and credit for the purpose of reducing the amount of the fee that a legal and orderly adjustment of accounts, as the Secretary of the Interior has made for the Osages, would give to Ewing.

That there is no question about this being the true reason for the objection to the "Kaw item" is conclusively established by the fact that the Second Auditor approved the Secretary's settlement in favor of the Osages, by which the *United States*, not the Kawes, are made responsible for this debt to the Osages, and on which the United States has actually paid the said \$70,096.12 to the Osages.

If there had been any merit in the question as to who was indebted to the Osages for the money the United States used in paying for the Kaw lands it would unquestionably have come out when the Secretary's settlement of land accounts of the Osages was before the Second Auditor.

CHARLES EWING,  
Per LUSK,  
*Attorney for Great and Little Osage Indians.*

No. 33.

[Office of the Del Monte Consolidated Mining Company (organized under the laws of the State of Colorado), 137 Broadway.]

NEW YORK, *October 18, 1881.*

MY DEAR SIR: A matter of business on which I have expended all of my means and a good part of the past year and a half, (the other part went to the Osages,) and which competent men assure me will make me a fortune, has culminated, and all that is needed now to make success an actual fact is my presence in Colorado. In this State has this matter rested for the past two weeks, and it cannot remain so many days longer. Every day's delay on my part has hurt my prospects, and I know that I have about reached the limit of time in which I can pay my score and take my profits.

When I know that my fee in the Osage settlement has passed your office, I can get what means I must have. It don't do for me to say that I know that it will pass, as I do, but I must know that it has. The reason for this is that I can get money on call that in one way or another my friend can carry for ten and maybe fifteen days, but not longer, and I cannot have him get me money in that way with the possibility open of the Auditor and the Commissioner of Indian Affairs having a chance to get my case again, when they can hold it for a month or a year under advisement.

Therefore you will not, I know, feel offended when I urge you to act peremptorily on the case at once and give me at once the fee that all who know the case know that I have honestly earned.

If you are not entirely satisfied with the "Kaw land item" drop it out for the present, and let me have the remainder. I am as fully entitled to this item as to any other, and I know that I can convince you of this hereafter, but I had better lose it, poor as I am, than wait on its slow settlement as my matters now stand. Please let me hear from you to-morrow.

In haste, I am, yours sincerely,

CHARLES EWING.

Hon. W. W. UPTON,  
*Washington, D. C.*

[Telegram.]

NEW YORK, *October 20.*

Hon. W. W. UPTON,  
*Second Comptroller, Treasury Department, Washington :*

I am content to acknowledge Army indebtedness of \$800. Please deduct it from my Osage fee.

CHAS. EWING.

NEW YORK, N. Y., *October 20, 1881.*

Hon. W. W. UPTON, *Washington, D. C. :*

DEAR SIR: Being advised that my fee in the Osage land settlement will not be paid until I adjust a balance claimed by the Second Auditor as due from me to the United States, I to-day telegraphed you to deduct the said balance (about \$800) and pass the remainder of my fee.

I did this because delay in this matter will be very hurtful to me in my business here—many times more hurtful than the loss of \$800 that the patriotic Auditor wants to collect for the government.

Now, I don't, in fact, stand indebted to the United States; on the contrary, it is largely indebted to me, and, consequently, if I can pay the said \$800 *under protest*, and thereby *not delay* the payment to me of the balance of the fee that you have found due me, I desire to do so. If this can be done, allow me to recall my telegram of to-day and substitute for it the inclosed.

I am, respectfully,

CHARLES EWING.

NEW YORK, N. Y., *October 20, 1881.*

Hon. W. W. UPTON,  
*Second Comptroller, United States Treasury :*

SIR: Protesting against the demand, I request that you deduct from the fee allowed me in the Osage land settlement the balance said to be due from me to the United States on my old Army accounts, which is, I believe, about \$800.

I am, very respectfully,

CHARLES EWING.

No. 34.

TREASURY DEPARTMENT,  
SECOND COMPTROLLER'S OFFICE,  
October 21, 1881.

SIR: I have the honor to return herewith the papers relating to the claim of Charles Ewing for \$17,706.27 for services under his contract with the Osage Indians.

I have carefully considered your letter of the 5th instant, in which you express the opinion that the papers do not show that the claimant, Ewing, has "performed the services he had agreed to perform," and in which you quote with disapproval that part of the opinion of the present Secretary of the Interior in which he says of Mr. Ewing's duties: "His contract, therefore, was to render services as to those matters for three years, and not to accomplish within that time what the Indians desired. He did not guarantee that any of the matters as to which he was specifically charged, or which should be submitted to him, should be accomplished within three years, nor that they should ever be accomplished. He was simply under obligation to render services faithfully and intelligently in endeavoring to accomplish these matters. The only contingency in the whole case was as to his fee."

If your construction of the contract is correct, and the claimant bound himself to successfully accomplish each of the several works in which he undertook to act as attorney, he has not complied with his undertaking; but I agree with the honorable Secretary in the opinion that he did not so bind himself.

The contract was executed and approved in pursuance of section 2103 of the Revised Statutes, and its fulfillment was found and determined in accordance with section 2104 Revised Statutes, which provides that—

"No money shall be paid to any agent or attorney by an officer of the United States under any such contract or agreement other than the fees due him for services rendered thereunder; but the moneys due the tribe, Indian or Indians, as the case may be, shall be paid by the United States through its own officers or agents to the party or parties entitled thereto, and no money or thing shall be paid to any person for services under such contract or agreement until such person shall have first filed with the Commissioner of Indian Affairs a sworn statement showing each particular act of service under the contract, giving date and fact in detail, and the Secretary of the Interior and Commissioner of Indian Affairs shall determine therefrom whether, in their judgment, such contract or agreement has been complied with or fulfilled; if so, the same may be paid, and, if not, it shall be paid in proportion to the services rendered under the contract."

The only question which the Secretary of the Interior and Commissioner of Indian Affairs are required by this statute to determine from the claimant's affidavit is, "whether the contract or agreement has been complied with or fulfilled," and they having, on July 7, 1880, so "determined and decided that the contract mentioned in said affidavit has been complied with and fulfilled on the part of said Charles Ewing," the law does not require the matter to be again decided by those officers or their successors, and this disposes of any technical question raised on that point.

Omitting the merely formal parts of the contract, its terms are as follows: The said Osages have this day constituted and appointed the party of the second part (said Ewing) the attorney of the said Osage Nation in all matters that may be submitted to him by said nation, and particularly have charged the said attorney as follows, to wit:

1st. To review the accounts of the said nation with the United States for and on account of the sale of the Osage lands in the State of Kansas.

2d. To secure the payment from the United States for the sixteenth and thirty-sixth sections in each of the townships embraced in the public surveys of Osage lands in the State of Kansas that were granted by the United States to said State for school purposes, with interest thereon at the rate of five per cent. per annum from the date of final survey of each township until the date of the allowance and payment of this claim.

3d. The payment to the members of the Clermont band of Osages of the money still due them under the ninth article of the treaty of March 2, 1839.

4th. To secure the granting of pensions to the families dependent upon the Osages who were killed by citizens of the United States (known as Kansas militia), in 1873, for which claims are now on file in the Indian office.

5th. To secure the granting by the United States to the Great and Little Osage Nation of a patent for the lands it now owns in the Indian Territory, and generally to do and perform all other things that an attorney may properly do and perform for the period of three years from this date; and whereas the said party of the second part has agreed faithfully and intelligently to perform any and all the duties that may be imposed upon him by reason of the matters herein set forth: Now, therefore, the parties of the first part, acting for and in behalf of the said Great and Little Osage Nation, hereby agree for said nation to pay, or cause to be paid, to said party of the

second part, his heirs or assigns, 12½ (afterwards reduced by consent to 7½) per cent. of all moneys that said party of the second part may hereafter cause to be paid to said nation, or any band thereof, or of any moneys that he may cause to be passed to the credit of said nation in the Treasury of the United States, which said moneys are now due, or should in law or justice be placed to said credit. I am unable to see any fault in the Secretary's construction of the contract.

The Secretary and Commissioner being charged by the above statute with the duty of determining under the statute and from claimant's affidavit whether the claimant has fulfilled, it must be they alone who are confined to claimant's affidavit, and if the question is to be redecided by any other officer, such officer is not confined to the affidavits of the claimant. To my mind it is abundantly proved, both by claimant's affidavits and by other evidence on file, that the claimant has faithfully served his clients and in all things complied with his contract.

Your remark that the contract, as construed by the Secretary of the Interior, "would be unconscionable," and your inquiry, "Does any sensible man believe the Osage Nation should have entered into such a contract?" make it pertinent to consider what, if anything, the Osages have gained by entering into the contract. The contract shows that one of its leading objects was to procure payment for certain school lands under a claim resting on the following facts:

At the time of the passage of the act of January 29, 1861, admitting the State of Kansas into the Union, the Osages had the Indian title to the large tract of land in question, and the dedication of sections 16 and 36 to school purposes, mentioned in that act, does not differ from like dedications under which other lands are surveyed and sold.

Afterward, September 29, 1865, a treaty between the United States and the Osages was entered into (14 Stat., 687), (ratified January 21, 1867), by which said Indians ceded to the United States said lands to be held in trust for said Indians, and to be surveyed and sold "as other lands are surveyed and sold," and the proceeds thereof and interest thereon at 5 per cent. per annum, to be held in trust for said Osage Indians.

It was the construction of the departments that the stipulation contained in the terms surveyed and sold "as other lands are surveyed and sold," was complied with when all the land other than school sections were turned into money and placed to the credit of the Indians.

One of the objects for which Mr. Ewing was employed was to establish a different construction of this language.

By his efforts in the Indian Department he procured favorable reports to Congress from the Commissioner of Indian Affairs and the Secretary of the Interior upon this question and upon several other questions hereafter to be mentioned; and Congress, acting upon those reports, so procured by Mr. Ewing, gave legislative construction to the treaty by the act of June 16, 1880, in favor of Mr. Ewing's theory that the Osages were entitled to receive one dollar and twenty-five cents per acre for all the school sections within said tract.

The treaty is spoken of in several preceding papers in this case as if it provided that every acre of the Osage land should be sold "at a price not less than one dollar and twenty-five cents per acre as other lands are surveyed and sold," and as if the Osages were clearly entitled before the passage of the last-named act to be paid for the sixteenth and thirty-sixth sections; but such is not the language of the treaty. Its only provision in this particular is that the land "is to be held in trust for said Indians and to be surveyed and sold for their benefit by the Secretary of the Interior, under such regulations as he may from time to time prescribe under the direction of the Commissioner of the General Land Office, *as other lands are surveyed and sold.*"

At the time the treaty was made other lands were surveyed and sold by dedicating the proceeds of sections 16 and 36 to the use and benefit of the purchasers of the thirty-four remaining sections, and thereby enhancing the value and expediting the sale of the thirty four sections.

I think it clear that no administrative officer would have acted on the claimant's theory without further legislation, and I doubt whether the courts would or could have construed the treaty as permitting payment to the Osages for the sections dedicated to school purposes, it being a matter of history that at the time and for many preceding years the usual mode in which other lands were surveyed and sold by the United States was by first dedicating certain school sections, and it being settled as early as 1861 that in the State of Kansas those sections would be the sixteenth and thirty-sixth, as was the case in all the then recently organized Territories and States.

By securing this construction Mr. Ewing caused the sum of \$792,701 27, to be placed to the credit of the Osage Nation, which the Osages had small prospect of obtaining at the time they entered into this contract. The construction of this treaty thus obtained by act of Congress is now of the same force and effect as if it had been obtained by the judgment or decree of a competent court; and even if this Congressional construction enlarges the grants contained in the treaty, and if this large sum was erroneously or

gratuitously placed to the credit of the Osage Indians, the error does not vitiate the act of Congress.

Congress had full power to settle that question, and even to make a gratuitous grant to the Osages, and the grant cannot be revoked. Thus the Osages have gained more than three quarters of a million of dollars by this contract.

The present claim is for 7½ per cent. on \$236,083.88, and, with the exception of \$70,096.12 thereof, this sum was recovered for, and secured to the Osages on account of certain sales of Osage lands that were made in pursuance of acts of Congress, which acts the claimant alleged were in derogation of the treaty above referred to. One of them, the act of July 15, 1870, (16 Stat., 162), purports to authorize sale of these lands upon a credit of one year.

The act of June 23, 1874, (18 Stat., 283), purports to provide for deferred payments. The act of August 11, 1876, (19 Stat., 126), purports to authorize entries of Osage lands to be made by actual settlers, one fourth of the purchase money to be paid at the time of entry, and the remainder in three annual payments, drawing interest at 5 per cent. per annum.

Each of the following acts purports to prescribe terms in regard to the mode of selling these lands, or in regard to the interest upon the proceeds, namely: act July 15, 1870, (16 Stat., 362); act of May 9, 1872, (17 Stat., 91); act of May 11, 1880, (21 Stat., 1227).

The evidence shows that it was through the labors of the claimant that the favorable report from the Indian Department was secured upon which this payment was provided for in the act of June 16, 1880. Prior to this act an administrative officer could not have made these payments without acting in violation of some one or more of the several acts of Congress above referred to, and even if administrative officers could have been induced to overrule or disregard those acts, there was no appropriation from which payment could have been made. I think these considerations will do away with the impression that these sums were "certain to be paid," that "it did not require the services of an attorney," and that "a little attention by the Secretary of the Interior would be, and doubtless was, far more effective."

The statement that "there is not a particle of legal evidence that he ever made any efforts to secure the nation the benefits of either of the last three specified objects" is one easy to make; but both the papers in this case and the published reports of the department show the statement to be erroneous. The papers on file show continuous and faithful services in respect to each of the objects specified in the contract, not only from the date of the approval of the contract, but from the date of its execution, and, as was remarked in the letter of this office of date July 13, 1880, "If success be taken as an element of proof there are decided indications of extraordinary services."

If it had been the case that the treaty contemplated pay to the Osages for the school lands when they should be sold, it would still be true that, without any actual sale, the lands were passed to the State of Kansas, and we are bound to take notice, as of geographical and historical facts, that there were vast quantities of these lands that will not be sold for \$1.25 per acre for many years to come. Yet not only the \$1.25 per acre has been obtained by the Osages on all these lands, but nearly half that amount has been obtained for them on account of supposed interest. The claim for the percentage on the \$70,096.12 rests upon entirely different ground, which I have not yet had time to fully examine, and action on that item is postponed for that reason. Being fully satisfied that the claimant is entitled to the percentage on the sum of \$165,937.76 I have certified a balance in his favor of \$12,449.08.

It being shown by the records of the accounting officers that an account was stated, on the 9th day of February, 1878, in favor of the United States against the said Charles Ewing, as a recruiting officer of the United States, and a balance of \$361.91 certified to be due from him, payable to the appropriation "Expenses of recruiting 1871 and prior years;" that sum is deducted, and the requisition therefor should be made payable to the order of the Treasurer of the United States to be covered into the Treasury, and the requisition for the remainder, namely, \$11,537.17, should issue in favor of the said Charles Ewing.

Very respectfully,

W. W. UPTON, *Comptroller*,

Hon. O. FERRISS,  
*Second Auditor.*

No. 35.

No. 4659.]

TREASURY DEPARTMENT, SECOND AUDITOR'S OFFICE,  
October 5, 1881.

I certify that I have examined and adjusted the account of Charles Ewing, being sum claimed by him under a contract with the Osage Indians (Osage Nation), said



contract bearing date February 14, 1877, and find that there is nothing due said claimant for reasons set forth in my letter of this date, as appears from the statement\* and vouchers herewith transmitted for the decision of the Second Comptroller of the Treasury thereon.

O. FERRISS, *Auditor.*

To the SECOND COMPTROLLER OF THE TREASURY.

SECOND COMPTROLLER'S OFFICE.

I admit and certify, this 19th day of October, 1881, a balance due Charles Ewing of \$12,449.08, payable out of appropriation "Payment to the Osage Indians for ceded lands embraced in the Osage Reservation, in the State of Kansas."  
\$12,449.08.

W. W. UPTON, *Comptroller.*

TREASURY DEPARTMENT, SECOND COMPTROLLER'S OFFICE,

October 19, 1881.

Upon the within claim of Charles Ewing for 7½ per centum on \$236,083.88 the question whether he is entitled to said percentage on \$70,096.12 thereof is reserved for future consideration.

W. W. UPTON, *Comptroller.*

OCTOBER 21, 1881.

Since making the above entry information has been received that Charles Ewing stands charged on the books of this department in the sum of \$861.91, and the said Charles Ewing has filed his written request that this indebtedness be satisfied from the proceeds of the within claim, therefore requisitions will issue as follows:

One in favor of the claimant for \$861.91 to be paid to the order of the Treasurer of the United States, and by him deposited as a deposit by Charles Ewing in satisfaction of the above-mentioned indebtedness, and credited on his Army accounts on the books of the Second Auditor under "Expenses of recruiting 1871 and prior years."

A second requisition will issue in favor of the claimant for \$11,587.17 to be paid to him, present.

W. W. UPTON, *Comptroller.*

No. 36.

TREASURY DEPARTMENT, FIRST COMPTROLLER'S OFFICE,

Washington, D. C., October 29, 1881.

SIR: On the 24th instant a settlement warrant, No. 2889, for \$11,587.17, in favor of Charles Ewing, was signed by the assistant secretary. It is now awaiting the signature of the First Comptroller. With it are presented papers from which are stated the following facts:

On the 14th day of February, 1877, a contract was entered into between the Osage Indians and Charles Ewing, by which the said Ewing was to prosecute certain claims against the government in favor of said Indians, and for his compensation was to receive 12½ per cent. on such sums as should be, through his agency, passed to the credit of those Indians, in the United States Treasury.

This contract was approved by the Secretary of the Interior and the Commissioner of Indian Affairs, who limited his compensation to 7½ per cent. Upon the presentation of his claim for payment of his services under this contract, Mr. Ewing filed an affidavit upon which is the following indorsement by the Commissioner of Indian Affairs:

"Based on the within affidavit, under section 2104 R. S., and in compliance with the directions of the Hon. Secretary of the Interior, as expressed in his letter of July 17, 1881, I have caused this account to be stated in favor of Charles Ewing on what is termed his contract, although my views, as expressed in my letter of May 26, 1881, to Hon. Secretary of the Interior remain the same as at that date.

"H. PRICE, *Commissioner.*

"OFFICE OF INDIAN AFFAIRS, September 5, 1881."

The papers also show that the Second Auditor declined to state the account until directed by the Second Comptroller, giving his reasons at length.

Referring to section 2103 United States Revised Statutes, with reference to contracts with Indians, the fifth subdivision of said section requires such contracts to have a

\* For statement see Exhibit G.

fixed limited time to run, which shall be distinctly stated; and a subsequent clause declares that all contracts or agreements made in violation of the section shall be null and void. By this contract the term of employment of said Ewing, as the attorney of the Indians is limited to three years, while the time or times of payment are without limit.

By section 2104 of the Revised Statutes it is provided that no money or thing shall be paid to any person for services under such contract or agreement until such persons shall have first filed with the Commissioner of Indian Affairs a sworn statement showing each particular act of service under the contract, giving dates and facts in detail; and the Secretary of the Interior and the Commissioner of Indian Affairs shall determine therefrom whether, in their judgment, such contract or agreement has been complied with or fulfilled; if so, the same may be paid, and if not, shall be paid in proportion to the services rendered under the contract.

The query arises under the last section quoted, whether the dissent of the Commissioner of Indian Affairs to the allowance of this claim is a compliance with its requirements; in other words, whether the judgment of the Commissioner and of the Secretary must not concur in its allowance; and if one dissents, whether it can be paid.

Referring to the contract again, attention is invited to the fact that the term of service of the attorney expired on the 14th of February, 1880. By the affidavit in support of the present claim it appears that it is for services rendered subsequent to the expiration of the term of service under the contract.

The attention of the First Comptroller was, some time ago, called to this claim by the widow of Colonel Adair, one of the Indians interested, with a statement that she objected to its payment. Subsequently, the attention of the First Comptroller and of the deputy first comptroller were also called to it.

The papers were but recently presented, and they are voluminous; and the First Comptroller was so much pressed with business that the subject was referred to me.

In view of the facts stated, and of the questions whether the claims may be considered as conclusively settled by the allowance of the Secretary of the Interior, with such indorsement as has been made by the Commissioner of Indian Affairs, showing his dissent, if you shall deem it unnecessary to call the attention of the Second Comptroller to the subject, under section 191 of the Revised Statutes the warrant will be signed at once, so that the settlements of the accounts of the Treasurer and Register may correspond on the first of November.

I deem it proper to call your attention to this, supposing that possibly it has not been.

Very respectfully,

J. TARBELL,  
*Acting Comptroller.*

Hon. WILLIAM WINDOM,  
*Secretary of the Treasury.*

TREASURY DEPARTMENT,  
October 29, 1881.

Respectfully referred to the honorable Second Comptroller, to whom the facts contained in the within communication, so far as sustained by the papers on file in the case, are submitted for his decision thereon, under section 191, Revised Statutes.

The warrant in question will be withheld for the present awaiting such decision.

H. F. FRENCH,  
*Acting Secretary.*

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No. 37.

In the matter of the claim of Charles Ewing, under contract with the Osages.

Respectfully returned to the honorable the Secretary of the Treasury.

The annexed letter of the acting First Comptroller presents but one new point, namely, that the widow of Colonel Adair has filed papers in his office, and objects to the payment. Each of the other objections has been repeatedly presented and argued by the Second Auditor and heretofore fully considered.

The acting First Comptroller states nothing of the nature of the Adair objection, and it is obvious that a statement of the nature of the Adair claim would show that it is not a matter that could be acted upon in this case by the accounting officers.

The papers show that Adair was not a party to the claimant's contract, and the prohibitions of section 2103 of the Revised Statutes render it impossible for him, not being such party to the contract, to be a party in the adjustment of this claim against the funds of the Osages.

If he has a claim on Mr. Ewing, to which the Osages are not parties, the accounting officers cannot settle it.

A moment's reflection will convince the acting First Comptroller that if the papers referred to were properly received from Mrs. Adair by the First Comptroller for his official action, they cannot relate to a claim on the Osage funds, for the First Comptroller has no jurisdiction to receive, examine, or settle an account or claim of that kind. (R. S., secs. 269, 273, and 277.)

In regard to the other points, I regret to find that the acting First Comptroller is quite misled and misinformed as to existing facts. He seems to think that the Secretary of the Interior and the Commissioner of Indian Affairs have never certified that the contract was fulfilled, and that section 2104, Revised Statutes, has never been literally complied with in that respect. If he had taken time to read the letter of this office, filed herein on the 21st ultimo, he would have been referred to the original indorsement of those officers, filed herewith, by which on the 7th day of July, 1880, they both "determined and decided that the contract mentioned in said affidavit has been complied with and fulfilled on the part of the said Charles Ewing;" and it would have been obvious to him had he become acquainted with the facts, that another approval by a Commissioner of Indian Affairs is not called for by the said section 2104, or in any manner necessary. He would also have seen that in place of there being but one affidavit relating to fulfillment of the contract, as his statements imply, there are three affidavits on file on that point.

A careful reading of the decisions made and filed in this case would also have undeceived him on the only remaining point of objection his letter presents, and would have demonstrated that nothing has been allowed in the case except for services performed before the expiration of the three years. Had he acquainted himself with the facts, I think he never would have countenanced the often repeated argument of the Second Auditor, that because the contract of employment had but the limited period of three years to run, the claimant could have no right to money earned within the three years, unless it chanced that he actually received his earnings within that time.

The examination and the settlement of accounts relating to the Indian trust funds are so foreign to the jurisdiction and usual duties of the acting First Comptroller that perhaps it is not surprising that he should fail, in the multiplicity of his duties, to grasp all the facts involved in so complicated a case, especially as the care of those trust funds is one of the many branches of public service upon which no experts are employed in his office.

Treating the account as if it were a case resubmitted to me by the Secretary of the Interior in pursuance of said section 191, I have the honor to state, in returning it, that upon careful consideration I am of opinion that the balance heretofore certified to the Secretary of the Interior in favor of the claimant is correct, and that the same is hereby in all respects confirmed.

W. W. UPTON, *Comptroller.*

SECOND COMPTROLLER'S OFFICE, November 1, 1881.

No. 38.

TREASURY DEPARTMENT, November 1, 1881.

Upon reading the letter of the honorable Second Comptroller of November 1, 1881, it is decided that the warrant within named should be issued.

H. F. FRENCH,  
*Acting Secretary.*

TREASURY DEPARTMENT, November 2, 1881.

Respectfully returned to the honorable First Comptroller. Interior (Indians and Pensions) warrant No. 2984, in favor of Charles Ewing for \$11,587.17 has this day been issued.

J. K. UPTON,  
*Assistant Secretary.*

NOTE.—In accordance with the foregoing certificate of the Second Comptroller, the sum of \$12,449.08 declared to be due Charles Ewing was disposed of as follows:

Paid to said Ewing, by draft of the Treasurer of the United States, No. 15374, November 3, 1881 .....	\$11,587 17
Carried to the credit of said Ewing on the books of the Second Auditor's office to offset a balance declared against him, as late captain Thirteenth United States Infantry, per certificate of Second Comptroller No. 7087, February 9, 1878* .....	861 91
Total .....	12,449 08

\*See Exhibit H.

No. 39.

## EXHIBIT A.

The following letter of the Commissioner of Indian Affairs, dated November 18, 1879, and report of Agent L. J. Miles, dated January 12, 1880, in relation to the ratification by the Osage Nation of the power of attorney and contract entered into by chiefs Joseph Paw-ne-no-pash-e, Black Dog, and Augustus Captain, were not furnished to the Second Auditor until September 16, 1881—fourteen months after the first claim of General Ewing had been adjusted.

## DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS.

*Washington, November 18, 1879.*

SIR: I have to request you to call your Indians together in council and ask them if they ratify the power of attorney and contract executed by the following chiefs: Joseph Pah-ne-no-pash-e, Black Dog, and Augustus Captain, on the 14th of February, 1877, with Charles Ewing, attorney at law, of Washington, D. C., for the settlement of the dividend for pay for the sixteenth and thirty-sixth sections of Osage lands in Kansas for school purposes.

You will simply present the matter to the council and ask them whether they did so authorize the power of attorney and contract which have been forwarded here. I have no doubt they did and only require you to fortify the fact, in order that hereafter there may be no mistake.

Yours respectfully,

E. A. HAYT,  
*Commissioner.*L. J. MILES,  
*United States Indian Agent, Osage Agency, Ind. T.*UNITED STATES INDIAN SERVICE,  
*Osage Agency, January 12, 1880.*

DEAR SIR: Inclosed find answer of Osage council to office letter of November 18. I submitted letter and have given their reply as nearly in their own words as I could.

Yours respectfully,

L. J. MILES,  
*United States Indian Agent.*Hon. E. A. HAYT,  
*Indian Commissioner.*OSAGE AGENCY, *January 12, 1880.*

We, the chiefs and headmen of the Great and Little Osage Nation in council assembled, having had referred to our consideration a letter from the Hon. Commissioner of Indian Affairs, dated November 18, 1879, asking whether we did approve of and order Augustus Captain, Joseph Paw-ne-no-pash-e, and Black Dog to make contract with Charles Ewing to secure for Osage Nation, from the United States Government, pay for every sixteenth and thirty-sixth section of land ceded by Osage Nation to the United States Government, in treaty of 1865, and deeded by the government to the State of Kansas for school purposes; and in answer say that we elected these men for the term of two years, to do our business for us, and they were instructed to act for the best interests of their people; that they reported, on their return from Washington what they had done, together with contract they had made with one Charles Ewing, which was approved by us; and we still approve of the contract they made, being done during their term of office.

[Signed on behalf of the Osage Nation by 8 chiefs and 15 councilors.]

I certify on honor that I have carefully read and explained the letter of the honorable Commissioner of Indian Affairs, of November 18, 1879, relative to the Ewing contract, to the Osage council and interpreted their answer truthfully to the agent, reading the answer to them after it was written, and witnessed the signing of the same.

PAUL AKEN,  
*United States Interpreter.*

We certify on honor that we witnessed the signing of the foregoing answer and of our entire disinterestedness therein.

J. R. TOWNSEND.  
J. H. EDMONDSON..

I certify on honor that I presented the letter of the honorable Commissioner of Indian Affairs to the Osage council, as per instructions therein contained, and the foregoing answer is as reported to me by aforesaid council.

L. J. MILES,  
United States Indian Agent.

No. 40.

EXHIBIT B.

Statement of account of the number of acres of Osage Indian lands in the State of Kansas that have been alienated by the United States either by the act of Congress of January 29, 1861, entitled "An act for admission of Kansas into the Union," or since the creation of the trust for the sale of these lands by the treaty between the Great and Little Osage Indians, proclaimed January 21, 1867, and of the money received by the United States on account of the sales of said lands, and of the sum due said trust on the 30th June, 1880, in accordance with the provisions of act of Congress, approved June 16, 1880, entitled an "An act to carry into effect the second and sixteenth articles of the treaty between the Great and Little Osage Indians, proclaimed January 21, 1867.

OSAGE CEDED LANDS.

The area of the sixteenth and thirty-sixth sections of the Osage ceded lands in Kansas is 48,395.08 acres.

Value of the same, at \$1.25 per acre.....	\$60,493 85	
Interest at 5 per cent. from November 1, 1869, to June 30, 1880, inclusive.....	32,263 38	
		<hr/>
Amount which would have been due the trust if all the lands had been sold in accordance with the provisions of the treaty of January 21, 1867.....	92,757 23	
Deduct—		
Number of acres sold by the United States, 3,863.49, at \$1.25 per acre.....	\$4,829 36	
Interest on same, at 5 per cent. from November 1, 1869, to June 30, 1880, inclusive.....	2,575 66	
		<hr/>
	7,405 02	
Difference being the sum due the trust 30th June, 1880.....		\$85,352 21

OSAGE TRUST.

Area of the sixteenth and thirty-sixth sections of the Osage trust lands in Kansas is 182,920.96 acres.

Value of the same, at \$1.25 per acre.....	\$228,651 20	
Interest at 5 per cent. from November 1, 1870, to June 30, 1880.....	110,514 75	
		<hr/>
Amount which would have been due the trust if all the lands had been sold in accordance with the provisions of the treaty.....	339,165 95	
Deduct—		
Number of acres sold by the United States, at \$1.25 per acre, \$10,914.83.....	\$13,643 54	
Interest at 5 per cent. from November 1, 1870, to June 30, 1880.....	6,594 37	
		<hr/>
	20,237 91	
Difference being sum due the trust June 30, 1880.....		\$318,928 04

OSAGE DIMINISHED RESERVE.

Area of the sixteenth and thirty-sixth sections of the Osage diminished reserve lands in Kansas is 264,551.59 acres; value of the same at \$1.25 per acre.....	\$330,689 48	
Interest at 5 per cent. from November 1, 1871, to June 30, 1880, inclusive.....	143,298 75	
		<hr/>



Amount which would have been due the trust if all the lands had been sold in accordance with the provisions of the treaty.....	\$473,988 23
Deduct—	
Number of acres sold by the United States at \$1.25 per acre, 120.00.....	\$150 00
Interest at 5 per cent. from November 1, 1871, to June 30, 1880, inclusive.....	65 00
	215 00
Difference being the sum due the trust June 30, 1880.....	\$473,773 23

## RECAPITULATION.

Osage ceded.....	\$85,352 21
Osage trust.....	318,928 04
Osage diminished reserve.....	473,773 23
	\$878,053 48

J. A. WILLIAMSON,  
*Commissioner.*

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,  
June 30, 1880.

F. J. HARRISON, *Act.*  
To Hon. JOHN SHERMAN,  
*Secretary of the Treasury.*

Official copy.

R. E. TROWBRIDGE,  
*Commissioner.*

No. 41.

## EXHIBIT C.

*Statement of differences arising on settlement of account of the Osage Indians under act June 16, 1880.*

Amount certified by the Commissioner of the General Land Office and approved by the Secretary of the Interior.....	\$878,053 48
Amount certified by the accounting officers of the Treasury Department..	848,365 76
Difference.....	29,687 72

Arising as follows:

The Commissioner of the General Land Office allows interest on the <i>Osage ceded lands</i> at 5 per cent. per annum from November 1, 1869, to June 30, 1880.....	\$32,263 38
Less interest on a portion of said lands that have been sold..	2,575 66
Leaving net amount of interest on <i>Osage ceded lands</i> .....	\$29,687 72

The lands referred to were ceded to the United States by article 1, *Osage treaty*, January 21, 1867, and the proceeds of said lands were to be carried to the credit of the "civilization fund." The United States do not pay interest on this fund.

The object of the act of June 17, 1880, is to allow such an amount as would have accrued if sections sixteen and thirty-six of the ceded lands, which were alienated by the United States, had been disposed of as provided for by the *Osage treaty*.

If they had been so disposed of the proceeds would have been carried to the credit of the civilization fund, and would not have borne interest. It follows, therefore, that no interest can now accrue.

THOS. RATHBONE.

SECOND AUDITOR'S OFFICE, *July 10, 1880.*

SECOND COMPTROLLER'S OFFICE, *July 15, 1880.*

A. J. WHITAKER.

NOTE.—The amount certified by the accounting officers of the Treasury Department, as per the foregoing statement, was thus disposed of:

Placed to the credit of the <i>Osage Indians</i> per warrant No. 863, August 14, 1880.....	\$792,701 27
Placed to the credit of the "civilization fund," per same warrant, under article 1 of the <i>Osage treaty</i> of 1867.....	55,664 49
Total.....	848,365 76

General Ewing's fee is based upon the amount actually credited to the Osages, namely, \$792,701.27.

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No. 42.

EXHIBIT D.

TREASURY DEPARTMENT.

*The United States to Charles Ewing, Dr.*

For fee charged by him under a contract with Osage Indian Nation, dated February 14, 1877, nothing.

(The fee not being allowed for reasons stated in letter of this date herewith.)

SECOND AUDITOR'S OFFICE, July 2, 1880.

J. H. CARMIENCKE, *Clerk.*

Appropriation: Interest due on avails of Osage diminished reserve lands in Kansas, \$59,452.60.

The Second Comptroller finds due the claimant \$59,452.60.

SECOND COMPTROLLER'S OFFICE, July 16, 1880.

By direction of Comptroller:

J. D. TERRILL, *Clerk.*

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No. 43.

EXHIBIT E.

Appropriation warrant No. 887. Issued June 1, 1881.

By an act to carry into effect the second and sixteenth articles of the treaty between the United States and the Great and Little Osage Indians, proclaimed January 21, 1857, approved June 16, 1880.

Payment to the Osage Indians for ceded lands embraced in the Osage Reservation in Kansas, \$236,083.88, as per the following certificate of the Secretary of the Interior, warrant division, 1960.

DEPARTMENT OF THE INTERIOR,  
*May 24, 1881.*

By the first section of the act of June 16, 1880, entitled "An act to carry into effect the second and sixteenth articles of the treaty between the United States and the Great and Little Osage Indians," proclaimed January 21, 1867 (U. S. Stats., pamphlet ed. 1879-'80, pp. 291, 293), the Secretary of the Interior is authorized and directed to cause an account to be stated of the number of acres of the Osage lands in the State of Kansas that have in any way been alienated by the United States either by the act of January 29, 1861, entitled "An act for the admission of Kansas into the Union," or since the creation of the trust for the sale of these lands by the treaty between the United States and the Great and Little Osage Indians, proclaimed January 21, 1867, and of the money received by the United States on account of the sale of such lands, and to certify the difference between the sum so received and the sum that would be due said trust at the date of the account herein provided for by said treaty.

In accordance with the foregoing direction I have caused said account to be stated, and have the honor to certify that the number of acres of Osage lands in the State of Kansas alienated as indicated in the act and section noted is 3,536,220.04 acres, and that the difference between the money received by the United States on account of said lands and the sum that would be due said trust is, principal and interest, \$1,028,785.15.

An account in relation to Osage lands which embraced only the school sections of said lands, has been heretofore rendered, which account stated that the area of said lands was 480,969.31 acres, amounting, principal and interest, to \$848,365.76; this account included 44,531.59 acres of the school lands embraced within the area sold to the United States by the Osages under the first article of the treaty herein referred to, the value of which was \$55,664.49, and should have been placed to the credit of the civilization fund (see proviso in sec. 2 act of 16th of July, 1880, pamphlet ed. of Stats.

1879-80, p. 293), which would leave the sum due the Osages on said school lands, principal and interest, \$792,701.27.

Of the amount first above stated, namely, \$1,028,785.15, the sum of \$792,701.27 was placed to the credit of said trust by requisition No. 975 on the 17th of July, 1880, leaving a balance of \$236,083.88 still to be placed to the credit of the trust aforesaid over and above the expenses of survey and sales, and all money heretofore placed to the credit of the said trust, by requisition or otherwise.

S. J. KIRKWOOD,  
*Secretary of the Interior.*

## OSAGE ACCOUNT.

Amount of "school section," as per account rendered June 30, 1880 .....		\$848,365 76
Amount of principal, trust, and diminished reserve.....		56,702 74
Amount for sale of 13,202.85 acres, third quarter 1880, as per statement General Land Office .....	\$4,507 49	
Deferred payments.....	11,996 07	
		16,503 56
Interest to March 1, 1881 .....	629,933 12	
Less interest appropriated by Congress from 1873 to 1880, inclusive.....	467,055 54	
		162,877 58
Total principal and interest.....		1,084,449 64

CR.

By requisition 975, dated July 17, 1880, explained, as follows:

To credit Secretary of Interior, on account school section..	\$792,701 27	
To credit civilization fund.....	55,664 49	
		848,365 76
Amount due .....		236,083 88

No. 44.

## EXHIBIT F.

WASHINGTON CITY, D. C., May 28, 1873.

SIR: On behalf of the Cherokee Nation I desire, at the earliest possible moment, to have the funds due them from the Osages for their lands, transferred and invested in government bonds, as the treaty and law provides.

All the steps, but the transfer, have been completed for some time, and the laws authorizing it were enacted at last session.

The Osages have occupied the property for nearly two years. The loss in interest is very considerable.

I desire a statement of the entire area, according to survey, of the tract assigned by law to the Osages, and that the price fixed by the President, seventy cents per acre, be computed, and that you issue the necessary orders for the transfer and investment in United States bonds, as the treaty and law directs.

I also ask that the interest on the amount due from the Osages be paid the Cherokee Nation from the date of the approval of the deficiency bill, in which the latest amendment on the subject is, as the Osages are and for some time previous were in possession of the premises, and that said interest be paid the Cherokee Nation as other interest is paid.

Most respectfully soliciting early action, I am, with respect, your obedient servant

WILLIAM A. PHILLIPS,  
*For Cherokee Nation.*

Hon. C. DELANO,  
*Secretary of the Interior.*

No. 45.

## EXHIBIT G.

## TREASURY DEPARTMENT.

*The United States to Charles Ewing, Dr.*

For fee charged by him under a contract with the Osage Indians (Osage Nation), of date February 14, 1877, nothing.

The same not being allowed for reasons stated in letter of this date herewith.

SECOND AUDITOR'S OFFICE, October 5, 1881.

A. F. WIGHT, *Clerk.*

## TREASURY DEPARTMENT.

Appropriation: Payment to the Osage Indians for ceded lands embraced in the Osage Reservation, in the State of Kansas, \$12,449.08.

*The United States to Charles Ewing, Dr.*

For an amount allowed on the claim of Charles Ewing, for \$17,706.29, as fee of 7½ per cent. on \$236,083.88, under his contract of February 14, 1877, \$12,449.08.

The balance is reserved for future consideration.

SECOND COMPTROLLER'S OFFICE, October 19, 1881.

By order of Second Comptroller:

J. D. TERRILL,  
*Chief of Division.*

No. 46.

## EXHIBIT H.

No. 7087.]

TREASURY DEPARTMENT, SECOND AUDITOR'S OFFICE,  
*January 31, 1878.*

I certify that I have examined and adjusted the account of Charles Ewing, late captain Thirteenth United States Infantry, and find that he is charged as follows:

To balance No. 5958 .....	\$1,417 70
To Treasurer United States (internal revenue fund), for amount of tax due and unpaid on vouchers allowed for commutation of quarters and fuel from December 1, 1865, to July 1, 1866 .....	17 36
	1,435 06

And is entitled to the following credit:

By appropriation:	
For amount of disbursements allowed on vouchers heretofore suspended ..	573 15
Leaving due the United States a balance of (on account of "Expenses of recruiting, 1871, and prior years") .....	861 91

As appears from the statement and vouchers herewith transmitted for the decision of the Second Comptroller of the Treasury thereon.

E. B. FRENCH, *Auditor.*

To the SECOND COMPTROLLER OF THE TREASURY.

## SECOND COMPTROLLER'S OFFICE.

I admit and certify the above balance this 9th day of February, 1878.

W. W. UPTON,  
*Second Comptroller.*

NOTE.—The balance of \$861.91, due the United States, as per above certificate, consists of the following items:

Recruiting funds received by Captain Ewing in 1861, 1865, and 1866, but not accounted for .....	\$781 77
Amounts overpaid to himself for commutation of fuel in 1865 and 1866 .....	61 73
Internal revenue tax not paid .....	17 36
Suspended voucher .....	\$2 75
Less errors .....	1 70
	1 05
Total .....	861 91

A suit entered against General Ewing to recover the above balance is still pending and will be pressed to judgment for the amount of interest and costs.

## APPENDIX.

No. 47.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,  
*Washington, July 28, 1881.*

DEAR SIR: About the middle of June last Chief Joseph and Mrs. Captain, wife of A. Captain (deceased), of the Osage Nation, came to my residence, at Osage agency, and requested that I should assist them in getting some money they claimed due them from an attorney by the name of Ewing, in Washington. Joseph said that he and Captain had signed a contract with Ewing to get money for Osages from the government for some land in Kansas that was used for school purposes, and for other moneys due the Osages from the government. That they agreed to allow Ewing 12½ per cent. for getting the money, and when he got his money he was to pay them 4 per cent. for their services for their people; that Captain had all the papers; and as they had learned that Ewing had received his money, they wanted him to pay them as per agreement. I know nothing of this matter further than their statements, and submit it as information to the office.

Yours, respectfully,

L. J. MILES,  
*Indian Agent.*Hon. HIRAM PRICE, *Indian Commissioner.*DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,  
*Washington, July 29, 1881.*

SIR: Referring to a decision made by you in the matter of a claim of Charles Ewing for fees under a contract with the Osage Indians, dated the 11th instant, I have the honor to transmit herewith a letter from Agent Miles, of the Osage agency, Indian Territory, who is at present in this city, dated yesterday, in which he states that Chief Joseph and the widow of Augustus Captain, both of whom were parties to and signed said contract, had called upon him and requested that he assist them in obtaining payment of a sum of money which they allege is due them from said Ewing as their proportion of the percentage collected by him from the government under said contract, from which, if true, it would appear that there was undue influence used in obtaining the execution of the contract.

In view of these facts, I respectfully request an opinion of the department as to whether said action does not invalidate the contract; but if not, would it not be proper for this office to suspend action on the claim until a satisfactory settlement has been made between the claimants and said Indians? In addition to this, I would recommend that an inspector be directed to proceed at once to said agency to investigate and report upon the merits of the case, and that action be suspended on the claim pending the investigation.

Very respectfully,

H. PRICE, *Commissioner.*

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,  
*Washington, September 1, 1881.*

SIR: I transmit herewith for your information a report dated the 13th ultimo, with inclosures from Inspector W. J. Pollock, in relation to an alleged private understanding between General Charles Ewing and certain Osage Indians for a percentage to be received by said Osages for signing a contract executed between the Great and Little Osage Indians and General Ewing, which was the subject of your letter of the 29th of July last, wherein you presented a letter from Agent Miles, of the Osage agency, Indian Territory.

I also inclose a statement of the governor of the Osage Nation, Joseph Pah-ne-nopashe, filed in the department by Col. W. A. Phillips, under date of 29th ultimo. I am unable to discover any proof of the allegations presented in the letter of Agent Miles, in the papers submitted by Inspector Pollock, and hereby renew the instructions contained in department letter of 11th July last in relation to the statement of account.

Very respectfully,

S. J. KIRKWOOD, *Secretary.*

The COMMISSIONER OF INDIAN AFFAIRS.



OSAGE AGENCY, INDIAN TERRITORY,  
August 13, 1881.

SIR: In compliance with your letter of the 1st instant, I proceeded from Washington to this agency, and on the 8th instant obtained the statements of Black Dog and Governor Joseph in reference to the alleged private understanding between the Osage Indian committee (August Captain, Governor Joseph, and Black Dog) and General Charles Ewing in February, 1877.

On the morning of the 9th, in company with Agent Miles, I set out to find August Captain's widow (August Captain having died in August, 1878), who, it was reported, had in her possession some papers bearing on the subject in question.

After driving about 50 miles we reached her residence, and was informed she had gone to Kansas and would not return for several days. We returned to the agency on the 10th, almost suffocated (the thermometer at the agency standing at 108 in the shade), and the next day the agent drove up the Kansas road (about 40 miles) and intercepted Mrs. Captain returning and took her deposition.

It will be observed the statements of Black Dog, Governor Joseph, and Mrs. C. are not in harmony, and that Governor Joseph's statement made in writing to the Hon. W. A. Phillips yesterday differs from his affidavit made before me on the 8th instant. Augustus Captain was an educated half-breed; *his widow is a white woman*. Governor Joseph is an educated Indian, reads, writes, and speaks English. Black Dog is an Indian with no knowledge of our language.

If the testimony of either of them had any material bearing on the question at issue, I would venture an opinion as to the credibility of the witness, but as it is, I respectfully submit it for your consideration without further remark.

Very respectfully, your obedient servant,

WM. J. POLLOCK, *Inspector.*

Hon. S. J. KIRKWOOD,  
*Secretary of the Interior, Washington, D. C.*

UNITED STATES OF AMERICA,  
*Osage Indian Agency, Indian Territory:*

"SHUN-TAH SAP-E" (Black Dog) says:

Governor Joseph, August Captain, and myself went to Washington in the winter of 1877. August Captain acted as interpreter when we had two talks with General Ewing at his office; there was one other white man present, but don't know his name; Colonel Adair was not present at either of these talks in the office, but Colonel Adair and General Ewing (a low, heavy built man) came to our boarding-house together once. Colonel Adair wanted us to employ his (Adair's) brother to attend to our business, but August Captain was acquainted with General Ewing, and had been corresponding with him about trying to get a Catholic school for us, and so he told Colonel Adair that we would employ General Ewing. We agreed to pay General Ewing 12½ cents on the dollar for collecting our money. He was to bear all expenses. If there was any understanding to pay back any part of the 12½ cents by General Ewing to any one, I did not hear of it; nothing of that kind was ever interpreted to me.

Out at the foot of the hill by that big rock (pointing) the next day after we returned from Washington, Joseph told me "we might have made a few dollars out of that business at Washington, and I am sorry that we didn't." We did well for our people, but they won't pay us anything nor even thank us for it, and I am sorry we did not make something out of it at Washington. Afterwards I referred to this talk with Joseph (at the big stone) and asked him if he thought Captain made anything out of that business, and Joseph said he did not know; that if he (Captain) had made anything out of it he had kept it to himself.

This statement was made through the agency interpreter, and, from the high reputation of Black Dog, is absolutely true. It might have been taken in the form of an affidavit, but the *word* of an Indian is just as likely to be true as his *oath*. Moreover, the penalty for perjury would not apply.

POLLOCK.

UNITED STATES OF AMERICA,  
*Osage Indian Agency, Indian Territory, ss:*

JOSEPH PAWNE-NO-PASH-E deposes and says on oath:

I am an Osage Indian, at present governor of the Osage Nation in the Indian Territory; in 1877 I went to Washington with August Captain and Black Dog as a committee in behalf of our people; while in Washington we made a contract with General Charles Ewing to attend to our affairs for us, agreeing to pay him 12½ cents on the dollar on the collections he made for us. I was at General Ewing's office three or four times; Captain and myself were there once without Black Dog, and Captain was at General Ewing's office once or twice alone; I never had any talk *myself* with General Ewing about giving us anything, or part of the 12½ cents, but talked with Cap-

tain about it; I told him (Captain) we ought to have one each, and Captain replied we ought to get four cents and could if we wanted to; I told him to go and see General Ewing about it, and he went and came back and told me it was all right; I then told him to get a paper to that effect. Before we left Washington I heard General Ewing promise to send a copy of the contract and the paper which I understood to be the paper in reference to the four cents Captain said we were to get.

The idea of our getting anything was first suggested by August Captain, who said the sixteenth and thirty-sixth sections of that Kansas land would bring the Nation a great sum of money and we could make something out of it if we wanted to, but I never personally talked with any one about it in Washington, except Captain. About the middle of June last, I came with Mrs. Captain to see our agent to get him to help us about this business; I asked Mrs. Captain if her husband before his death ever received any paper on this subject from General Ewing; she said she thought he had, but was not certain and that she would look over his old papers and see if she could find it. Have not seen her since. I told Colonel Adair about this last fall and asked him to see General Ewing about it for me, but I never talked with him about it before.

JOSEPH PAWNE-NO-PASH-E.

Subscribed and sworn to before me this 8th day of August, 1881.

WM. J. POLLOCK,  
Indian Inspector.

UNITED STATES OF AMERICA,  
Osage Indian Agency, Indian Territory, ss:

JANE CAPTAIN deposes and says on oath:

I am the widow of Augustus Captain who died in 1878; I am fifty years of age; I reside on the Osage reservation, and am in possession of the farm and other property of my late husband, Augustus Captain.

Question. Your husband, Governor Joseph, and Black Dog went to Washington in 1877, and made a contract with General Charles Ewing in reference to some Osage land matters, did they not?—Answer. They did.

Q. Have you in your possession, or did you ever see your husband have, any letters or papers of any kind from General Ewing, or any one representing him in relation to that contract, or the fee or fees that were to result from that contract?—A. I have no papers in my possession to my knowledge referring to contract; I saw my husband have papers from Charles Ewing about contract, and he told me three days before he died to give the papers to Governor Joe; said Joe was all right and would keep the papers.

Q. Did you ever hear your husband in his lifetime say anything in regard to this subject of fees or commissions? If so, please to state, as near as possible, what it was he said.—A. My husband told me about nine months before he died that he, Governor Joe, and Black Dog had made a contract with Charles Ewing about their school lands in Kansas, and that if Ewing got the money for the Osages, they (Captain, Joe, and Black Dog) were to receive some pay from Ewing's portion or compensation, and that would help to finish the house we were building.

Q. Have you ever had any talk with Governor Joseph on that subject; if so, when did you first talk, where, and how often have you talked with him since?—A. I talked with Governor Joseph first on this subject during the winter 1880. He came to see me again at my house in May, 1881; and at this time he said that Ewing had drawn the money and had said nothing to us about it; that he was afraid he would not do as he had agreed, and we must see the agent about it and see if he won't help us. I talked with Joseph about this matter in June, 1881, at the agency.

Q. Did you mention this subject to Governor Joseph first, or did he first mention it to you?—A. Joseph always spoke to me first in regard to it.

Q. Did Joseph claim that he personally knew or heard anything when he was in Washington about Captain and himself getting a per cent.?—A. He always said that they were to have a percentage.

Q. Did you and Governor Joseph together call on Agent L. J. Miles, about the middle of last June, and ask his counsel and assistance in the matter.—A. We did, and went to the agent's residence to see him.

Q. Who first suggested consulting Agent Miles about the matter.—A. Governor Joseph. He said the agent was the proper authority for us to consult.

Q. Did you ever talk to Black Dog about this matter?—A. No.

Q. Did Agent Miles ever speak to you on this subject previous to your consultation at his residence or at any other time?—A. No, sir. Never only, when we went to him for advice.

her  
JANE X CAPTAIN.  
m. f. :

Witnesses:

J. E. FINNEY.  
J. SODERSTROM.

H. Ex. 73—4

The foregoing testimony subscribed and sworn to before me, at Barttersville, Cherokee Nation, Indian Territory, this 12th day of August, 1881.

L. J. MILES,  
*United States Indian Agent.*

CHARLES EWING, being first duly sworn, deposes and says that he has to-day seen in the office of the Hon. Hiram Price, Commissioner of Indian Affairs, a letter, of which the following is a copy.

(For copy of this letter see *ante*, page—)

That his first knowledge of the fact that the United States was probably indebted to the Osages on account of the sale of their lands was learned in the course of his general business some time before he was employed to adjust the Osage land accounts; that he never named the subject to the Osages until a delegation consisting of Joseph Pawne-no-pashe, governor, Black Dog, and August Captain, presented themselves at his office, 606 F street, in this city, without any solicitation or procurement on his part, and proposed to employ him as their attorney for the readjustment of their land accounts and in other matters of business then brought to his knowledge for the first time; that the delegation, on their own motion, called on him a second time to discuss the items of business for the care and prosecution of which they had employed him; that they promptly and without the slightest hesitation, and without any private understanding or supplemental contract of any kind, agreed to pay him a contingent fee of 12½ per cent.; that he personally drew the contract executed by himself and the Osage delegation on the 14th February, 1877; that he delivered the executed contract to the Osages in his own office; that they went voluntarily before the chief justice of the District and acknowledged the execution of the contract, and, returning to his office, delivered the same to him; that neither he nor any of the Osage delegation proposed, suggested, or intimated that any part of his fee should be given to any member of the delegation or any other Osage Indian; that the only contract, agreement, or understanding of any sort, kind, or description between him and the Osage Nation, or the governor of the Osage Nation, or any member or members of the Osage Nation, relative to any fee or allowance of, any kind on account of his professional services in this behalf, is distinctly and fully set forth in his contract; and that the statement that he ever agreed to or intimated that he would pay any part of his fee to Gov. Joseph Pawne-no-pash-e, Black Dog, August Captain, or any other Osage, or member of the Osage Nation is false; and he further states that he has not as yet paid, and if he retains his reason he never will pay, a single penny of the fees he has received or may receive for his services in this employment to any member of the Osage Nation.

And further deponent saith not.

CHARLES EWING,  
*Attorney for Osage Nation.*

Subscribed and sworn to before me this 29th day of July, 1881.

GEO. M. LOCKWOOD,  
*Notary Public.*

I, William A. Phillips, being first duly sworn, depose and say that I have been associated with General Charles Ewing in his Osage land case during a portion of two years, and long before any fee was paid in the case; that I have had numerous consultations with him as to the parties employed and interested therein; that no mention was ever made of any interest in his fee by any Osage or the Osage Nation, and that I am satisfied that there never was any. I have known Governor Joseph Pawne-no-pash-e, of the Osage Nation, have corresponded with him about this case and their general business, have received from him requests as to the various interests of the Osage Nation, and believe I enjoy the confidence of said Governor Joseph, and he has never mentioned to me or alluded to any such claim.

I file herewith a late letter on their business from the governor, which shows that the most perfect confidence between him and General Ewing still exists, and further that, from all my knowledge of the case and the parties, I do verily believe that no such promise was made by General Ewing:

WM. A. PHILLIPS.

Sworn and subscribed to before me this 29th day of July, 1881.

GEO. M. LOCKWOOD,  
*Notary Public.*

PAWHUSKA, OSAGE AGENCY, INDIAN TERRITORY,  
July 21, 1881.

SIR: Your favor of the 9th instant came to hand. Special Agent Smith has been here and examined into affairs at this agency, and the evidence will appear at the department before this reaches you.

The papers you and General Ewing sent me referring to sale of lands have been before the council and acted upon, but are not yet signed. I will attend to the matter and send as soon as I can.

In securing patent to our lands, it would be more satisfactory to the Osages if it could be obtained with the Kaw lands included. A proposition has already been made by leading Kaw Indians to join the Osages.

It is my earnest desire, as it is also of all the leading Osages, that a sum of money be set apart for the governor and councilors to defray expenses. The chiefs of the tribe have already furnished General Ewing with a petition duly signed asking that it be secured to us.

I think that a council properly organized and recognized by the department giving us the right to voice the expenditures of our money, would be of great advantage. I should be glad to have a delegation of Osages visit Washington this winter, if permission can be obtained from the department. Please do all you can for us, and let me hear from you.

Very truly yours,

JOSEPH PAWNNENOPASHE,  
*Governor of Osages.*

W. A. PHILLIPS, Esq., *Washington D. C.*

CHARLES S. LUSK, being first duly sworn, deposes and says as follows :

That he has been in the employ of General Charles Ewing, the attorney of the Great and Little Osage Indians, during the past ten years; that for the past six years his relations with said Ewing have been of the most confidential character, with a thorough and intimate knowledge of all his business, but especially with his business with the Osage Indians; that in February, 1877, a delegation of the Osage Nation, duly authorized to represent the nation before the United States Government, came to said Ewing's office, No. 606 F street, Washington, D. C., and told him they wanted him to take charge of their interests before the Interior Department; that they called upon him several times and discussed with him the several matters of business they wished him to take hold of; that finally he (Ewing) drew up a power of attorney and a contract in duplicate, which were copied by deponent, and to which the aforesaid delegation appended their signatures; that he (the deponent) witnessed said signatures, and then accompanied the delegation to the office of Chief Justice Carter, before whom they acknowledged the execution of said power of attorney and contract.

Deponent further states that he was present at all the discussions held between said Ewing and said delegation, and that at no time was any intimation made by any member of the delegation that a fee would be expected for their services, or was any fee offered or agreed to be paid them, or any of them, by said Ewing; that at no time since, to his knowledge, has any demand for such a fee been made; and that, had any such intimation, offer, or demand been made, he, with his knowledge of said Ewing's business and access to his papers, all of which are in deponent's care, would have been certain to have known of it.

Deponent would further state that, from an intimate, personal acquaintance with said Ewing of over ten years, he knows that General Ewing is totally incapable of offering or agreeing to pay a bribe to said Osage delegation, or, in fact, to any one; that he knows of several instances of persons having claims in which he (Ewing) was the attorney proposing that money should be used to secure the payment of such claims, and of his peremptorily declining in such case to be a party to such transaction, declaring that he would withdraw from the case if it came to his knowledge that it was indulged in.

And further saith not.

CHAS. S. LUSK.

Subscribed and sworn to before me this 29th day of July, 1881.

GEO. M. LOCKWOOD,  
*Notary Public.*

Know all men by these presents that I, Joseph Pah-ne-no-pashe, governor of the Great and Little Osage Nation, and delegate of the said Osage Nation to the city of Washington during the month of February, A. D. 1877, and who, as such, entered into a contract with General Charles Ewing, attorney of the Osage Nation, on the 14th day of February, 1877, having been shown a letter of United States Agent L. J. Miles, addressed to the Commissioner of Indian Affairs, and dated Washington, July 28, 1881, in which it is stated "that they agreed to allow Ewing 12½ per cent. for getting this money, and when he got his money he was to pay them 4 per cent. for their services for their people," I do hereby solemnly declare that I never spoke a word to General Charles Ewing, either before or since we entered into contract with him on behalf of the Great and Little Osages, about his paying 4 per cent. or any other sum of money to me or any delegate, and that General Charles Ewing never said a word to me or to

any one of the delegates in my presence about paying us or any one any portion of his fee, and all that I ever heard on that subject was said after we had entered into agreement with said Ewing and we had returned to the place where we staid. One of the delegates, August Captain, said that we would receive nothing from the Osage Nation for our trouble, and perhaps we might get something from General Ewing, if he got his 12½ per cent.; and I said perhaps he might give us 1 per cent., each of us three; and he said we might get him to give us 4 per cent.; but I do not know whether August Captain ever spoke to General Charles Ewing on the subject, and I never did at any time, and I never saw or knew of the existence of a contract or any other paper, except the contract we entered into with said Ewing for the Great and Little Osages on said February 14, 1877.

At the request of the widow of August Captain I went to the United States agent, because she thought she might get something from General Charles Ewing, but I again declare that if any promise was made to pay or allow anything, I do not know of it; and I never asked General Ewing to make or heard him make any such promise, and that I entered into the contract made with General Ewing for the benefit of the Osage Nation, which had at one time entered into a contract for 33 per cent., and I thought 12½ per cent. was cheap.

JOSEPH PAWNENOPASHE,  
*Governor of Osages.*

As witness my hand this 12th day of August, A. D. 1881.

his  
HARD + ROPE.  
mark.

J. H. CONNOR,  
*Witness to Hard Rope's mark.*

Signed and declared to be true in our presence :

WM. A. PHILLIPS.  
J. H. CONNOR.  
THEO. R. GAY.  
J. H. TISDALE, P. M.

[Indorsement.]

WASHINGTON, D. C., August 29, 1881.

Respectfully referred to honorable Secretary of Interior to be filed with other papers. The inclosed statement was made in my presence and in that of prominent men of the Osage Nation.

W. A. PHILLIPS,  
*For General Charles Ewing.*