

THE RIGHTS OF THE INDIAN IN HIS PERSONALTY

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SECTION 1. NATURE AND FORMS OF INDIVIDUAL PERSONAL PROPERTY

The forms of personalty held by Indians (*e. g.* funds, personal belongings, notes, mortgages, growing crops, livestock, and choses in action) may be as diverse as those held by non-Indians. So, too, the forms of legal and equitable interests in personal property which may be vested in individual Indians are probably as diverse as among non-Indians. It is not our purpose to analyze those rights in personalty which Indians enjoy in common with other citizens. Yet in so far as the Indian is subject to the special guardianship,¹ of the Federal Government, problems peculiar to him arise concerning his acquisition, use, and disposition of his goods and chattels.

Under the United States Constitution, the rights of the Indian in his private property, whatever they may be, are "secured and enforced to the same extent and in the same way as other residents or citizens of the United States."² Nonetheless, Congress may, acting within the scope of its constitutional power, control and manage his affairs and property.³ The rights of the Indian in his personalty are primarily dependent upon the answer to the question: Has Congress, in the particular instance, undertaken to manage the property, and if so, to what extent have powers of management been conferred upon administrative officials?

Where Congress has not imposed restrictions upon the Indians personal property he may exercise the same power to use, destroy, or alienate his personal property which any other citizen possesses. There is nothing about the status of the individual Indian as such that incapacitates him from exercising the ordinary rights enjoyed by other owners of personal property.⁴ Whatever peculiar limitations are to be found in this field are limitations attached to the property rather than limitations affecting the person.

If legal problems in the field of Indian-owned personal property are viewed from this standpoint, the statutory or treaty origin of any property is of final importance in determining what limitations are attached to its use or disposition. If the treaty or statute provides that funds or teakettles are to be turned over to an Indian without restriction, that ordinarily ends the matter. The funds or the teakettles become the absolute property of the recipient, who may thereafter utilize, destroy, conserve, or give away his property without the consent of any official. On the other hand, if Congress provides that certain property shall be distributed to Indians "under such rules and regulations as the Secretary of the Interior may prescribe," it becomes necessary to examine what those rules and regulations provide in order to determine how far rights ordinarily associated with ownership can be exercised by the Indian and how far they rest with the reservation superintendent or some other government official.

Generally, but not universally, restricted personal property represents a carry-over of restrictions imposed upon land ownership. Since Indian lands have generally been subjected to restrictions on lease or sale,⁵ the treaties and statutes authorizing such lease or sale might, and often did, provide that the cash returns derived from such disposition of lands should be held by the United States in trust for the Indians concerned or should be turned over to the Indians subject to specific restrictions upon use or disposition. The legal justification for such provisions was that the Federal Government, having power to forbid or permit land alienation might condition its permission by extending restrictions to the proceeds derived from restricted lands. The factual justification was, generally, that the Indians might squander the proceeds of their lands and thus render themselves a burden to the Government or a danger to their neighbors unless restrained from doing so by governmental restrictions.

¹ "Guardian-ward" concepts are discussed in Chapter 8, sec. 9.

² See *Choate v. Trapp*, 224 U. S. 665, 677 (1912).

³ For the extent of congressional power over Indian affairs and Indian Property, see Chapter 5.

⁴ See Chapter 8.

⁵ See Chapter 11, secs. 4 and 5.

The policy problems which are raised in this field involve a balancing of two objectives: on the one hand to safeguard the economic future of the Indian add the purse strings of the Federal Government by, preventing the dissipation of the Indian's capital assets; on the other hand to minimize the cost of paternal supervision that such safeguarding entails and to give the individual Indian the right to exercise his own judgment, and to make mistakes in the process, without which practical educa-

tion in economics is impossible. At different times and in diverging circumstances, the balance between these conflicting objectives has naturally varied. No simple formula will explain why certain property has been restricted and other property turned over to Indian owners without strings. All that can be attempted in this chapter in that regard is to indicate the principal types of legislation in the field.

SECTION 2. SOURCES OF INDIVIDUAL PERSONAL PROPERTY

The same Indian may possess at one time restricted and unrestricted funds. With unrestricted funds, as, for example, wages earned by the Indian in private employment, he may do just as he wishes, as any other person might.⁶ Funds may come from sources not subject to control by the Federal Government; yet Congress may restrict the Indian's use of such funds as long as it retains its guardianship over the Indian.⁷ On the other

⁶ See *Choteau v. Burnet*, 283 U. S. 691 (1931), aff'g sub nom. *Choteau v. Commissioner of Internal Revenue*, 38 F. 2d 976 (C. C. A. 10, 1930).

⁷ See *Hickey v. United States*, 64 F. 2d 628 (C. C. A. 10, 1933); *United States v. Waller*, 243 U. S. 452 (1917); *Brader v. James*, 246 U. S. 88 (1918); and see Chapter 5, secs. 5C. D.

hand, funds, presently unrestricted, may have had their source in other restricted property.

The chief sources of funds which have given rise to special problems of Indian law are:⁸

1. Proceeds, including income, from restricted allotted lands.
2. Tribal funds individualized by per capita distributions to the Indians.
3. Payments from the Federal Government.
4. Payments of damages for loss of property.
5. Proceeds from the sale of restricted crops and livestock.

⁸Op. Sol. I. D., M.25258, June 26, 1929.

SECTION 3. SOURCES OF INDIVIDUAL PERSONAL PROPERTY-PROCEEDS FROM ALLOTTED LANDS

Comparatively few of the allotment acts have any specific direction governing the distribution of the proceeds from the disposition of the individual's land, either by sale or lease.⁹ The General Allotment Act of 1887¹⁰ did not permit any disposition, except by descent, of allotted lands for certain periods of time, during which the lands were to be held in trust by the United States. But realizing that the heirs might not want the inherited lands, since they might have allotted lands of their own, and desiring to encourage the sale of such lands,¹¹ Congress, in the Appropriation Act of May 27, 1902,¹² provided that trust lauds inherited from Indians might be conveyed in fee by them subject to the approval of the Secretary of the Interior.¹³

The rights of the heirs to the proceeds derived from conveyance are discussed in the cases of *National Bank of Commerce v. Anderson*¹⁴ and *United States v. Thurston County, Nebraska*,¹⁵ which sustain the regulations of the Secretary of the Interior controlling the proceeds under the Act of 1902. The court in the *National Bank of Commerce case* holds that the Act of 1902 does

⁹ See Chapter 11.

¹⁰ Sec. 5, Act of February 8, 1887. 24 Stat. 388, 389.

¹¹ The Act of 1902 permits alienation by the heirs, subject to the approval of the Secretary of the Interior, on the assumption that they would be "more competent in many cases to manage their own affairs than would the original allottee have been; and that the Secretary of the Interior should be the judge as to whether that condition has come about." *United States v. Park Land Co.*, 188 Fed. 383, 387 (C. C. Minn. 1911).

The purpose of the statute evidently is that lands inherited from deceased allottees by heirs who had sod were living upon allotments of their own, might be sold and converted into money, rather than remain untilled and unoccupied.

National Bank of Commerce v. Anderson. 147 Fed. 87, 89 (C. C. A. 9, 1906).

¹² Sec. 7, 32 Stat. 245, 275, 25 U. S. C. 379.

¹³ The approval of the Secretary of the Interior was necessary to the validity of a conveyance by no adult heir of an Indian allottee. *United States v. Leslie*. 167 Fed. 670 (C. C. S. D. 1909).

¹⁴ 147 Fed. 87 (C. C. A. 9, 1906).

¹⁵ 143 Fed. 287 (C. C. A. 8, 1906), rev'g 140 Fed. 456 (C. C. Nebr. 1905).

not indicate an intent by Congress to vacate the trust of the lands held in trust. When the lands are sold with the consent of the Secretary, the trust attaches to the proceeds, which are payable to the heirs under the rules prescribed by the Interior Department. In approving sales by heirs, the Secretary of the Interior had prescribed that all proceeds of such sales be deposited in United States depositories to the individual credit of each heir as his interest in the estate indicated and subject to checks of \$10 per month with the approval of the agent in charge and in larger amounts only when authorized by the Commissioner of Indian Affairs.¹⁶

In *United States Fidelity and Guaranty Co. v. Hansen*,¹⁷ the court holds that the purchase price derived from the sale of the land by the heir is a trust fund; that under the provision of the act requiring the Secretary of the Interior to approve a conveyance, he has the authority to exercise the government's option of continuing control or relinquishing it.

In 1907, Congress took the further step and permitted the sale or lease of allotted lands by either the allottee or his heirs during the trust period,

* * * on such terms and conditions and under such rules and regulations as the Secretary of the Interior may prescribe, and the proceeds derived therefrom shall be used for the benefit of the allottee or heir so disposing of his land or interest, under the supervision of the Commissioner of Indian Affairs; * * *.¹⁸

In the same Act of March 1, 1907,¹⁹ Congress amended the Act of 1902, and relinquished some control over the proceeds derived from the sale of allotments in the White Earth Reservation in Minnesota. The amendment provides for the removal of re-

¹⁶ Rules promulgated September 16, 1904, sustained in *United States v. Thurston County*, supra, fn. 15. See Chapter 13, sec. 4.

¹⁷ 36 Okla. 459, 123 Pac. 60 (1912).

¹⁸ Appropriation Act of March 1, 1907, 34 Stat. 1015, 1018, 25 U. S. C. 405. See Chapter 11.

¹⁹ 34 Stat. 1015, 1034.

restrictions on allotments held by adult mixed bloods. In *United States v. Park Land Co.*²⁰ the court construes this amendment to remove from federal control the sale of lands in the White Earth Reservation and the proceeds derived therefrom by the adult mixed-blood Indian, no matter how it has come to him. As for an adult full blood, the act provides that the Secretary of the Interior may remove the restrictions upon the sale of his allotment if satisfied that that Indian is competent to handle his own affairs. Till then, Congress retains control over the land and the proceeds therefrom.

Section 1 of the Act of May 29, 1908,²¹ which expressly excludes from its scope lands in Oklahoma, Minnesota, and South Dakota, permits the sale of allotments on petition of, the allottee, his heir, or duly authorized representative,

Provided, That the proceeds derived from all sales hereunder shall be used, during the trust period, for the benefit of the allottee, or heir, so disposing of his interest, under the supervision of the Commissioner of Indian Affairs: * * *

Sections 1²² and 4²³ of the Act of June 25, 1910,²⁴ provide generally for the control of the proceeds from the sale or lease of the Indian's restricted lands. Section 8 of the act allows the sale of timber on trust allotments with the consent of the Secretary of the Interior and the distribution of the proceeds to the allottee or disposal for his benefit under rules and regulations prescribed by the Secretary of the Interior.²⁵

The imposition of a trust over Indian funds may be effectuated by treaty as well as by statute. In the treaty concluded Sep-

²⁰ 188 Fed. 383 (C. C. Minn. 1911). In *United States v. First National Bank*, 234 U. S. 245 (1914), aff'g 208 Fed. 988 (C. C. A. 8, 1913), a case involving an attempt by the United States to set aside a conveyance of land by an Indian having less than one-eighth white blood, the Supreme Court held that any identifiable amount of white blood brought an Indian within the scope of the provision of the Act of March 1, 1907, removing restrictions upon the allotments of mixed-blood Indians.

²¹ 35 Stat. 444, 25 U. S. C. 404.

²² * * * All sales of lands allotted to Indians . . . shall be made under such rules and regulations . . . as the Secretary of the Interior may prescribe . . . *Provided*, That the proceeds of the sale of inherited lands shall be paid to such heir or heirs as may be competent and held in trust subject to use and expenditure during the trust period for such heir or heirs as may be incompetent, as their respective interests shall appear . . .

The section permits the deposit of Indian funds held by federal disbursing agents in banks. This provision is not affected by the Act of March 3, 1928, 45 Stat. 161, amending sec. 1. See 25 U. S. C. 372.

²³ Sec. 4 provides for the leasing of allotted lands for a period not to exceed 5 years, subject to and in conformity with such rules and regulations as the Secretary of the Interior may prescribe, and the proceeds of any such lease shall be paid to the allottee or his heirs, or expended for him or their benefit, in the discretion of the Secretary of the Interior. See 25 U. S. C. 403.

²⁴ 36 Stat. 855. This act applies to proceeds derived from the sale of lands held in trust as well as lands in which the power of alienation is restricted. *United States v. Bowling*, 256 U. S. 484 (1921), rev'g 261 Fed. 657 (D. C. E. D. N. Y. 1919).

²⁵ The Act of March 4, 1907, 34 Stat. 1413, provides also for the sale of merchantable timber on allotments on the Jicarilla Reservation and declares that the Proceeds therefrom are to be expended under the direction of the Secretary of the Interior for purposes beneficial to the indi-

September 30, 1854,²⁶ between the United States and certain Chipewewa Indians, a system of allotting tribal lands was established. Article 3 of the treaty provided that the President was to assign the allotments and that, he might issue patents "with such restrictions of the power of alienation as he might see fit to impose." In the exercise of this power, he may include in the patent a restriction against alienation without his consent. In the case of *Starr v. Campbell*,²⁷ it is held that this restriction extends to the timber on the land and therefore the President could regulate the distribution of the proceeds from the sale of the timber.²⁸

On the other hand, Congress may permit the leasing of allotted lands, subject to the approval of the Secretary of the Interior, but specifically providing that the allottees " * * * shall have full control of the same, including the proceeds thereof * * *."

A perusal of the acts cited indicates a general intent of Congress to retain, for a time, governmental control of the proceeds from the disposition of restricted allotted lands and to leave to the discretion of administrative officials the time and manner in which such funds are to be distributed or expended, subject to the qualification that the funds be used for the benefit of the Indian.

In the Appropriation Act of May 18, 1916, 39 Stat. 123, Congress provided for the disposal of flowage rights on the allotments of Indians of the Lac Court Oreilles Tribe. The provision states that;

any allottee or the heirs of any deceased allottee, as a condition to giving his or their consent to the leasing or granting of flowage rights on their respective allotments, may determine, subject to the approval of the Secretary of the Interior, what consideration or rental shall be received for such flowage rights, and in what manner and for what purposes such consideration or rental shall be paid or expended; and the consideration or rental shall be paid or expended under such rules and regulations as the Secretary of the Interior may prescribe. (P. 158.)

Under the agreement concluded between the Columbia and Colville Indians and the United States on July 7, 1883, ratified by the Appropriation Act of July 4, 1884, 23 Stat. 76, 79-80, allotments of tribal lands are made, but no provision is made for the sale of allotments; hence no problem of rights in funds therefrom could arise. However, by the Act of March 4, 1911, 36 Stat. 1358, Congress authorizes the Secretary of the Interior to sell some of the land held in trust for certain named Indians and to conserve the funds for the benefit of the allottee or to invest or expend them for the individual's benefit in such manner as he might determine. The Act of May 20, 1924, c. 160, 43 Stat. 133, permits the disposition of patented lands by the Columbia or Colville allottee, or if he were deceased, the heirs might convey the land in accordance with the provisions of the Act of June 25, 1910, 36 Stat. 855.

²⁶ 10 Stat. 1109.

²⁷ 208 U. S. 527 (1908).

²⁸ See Chapter 11, sec. 4B. Under the regulations approved by the President December 8, 1893, proceeds from the sale of timber from allotted lands, after the deduction of expenses, were to be deposited in some national bank, subject to the check of the allottee, countersigned by the Indian agent. In December 1902 the regulations were amended so that if the allottee were deemed incompetent to manage his own affairs, the agent had the authority, subject to the approval of the Commissioner of Indian Affairs, to fix the amounts the Indian could withdraw. For regulations regarding timber, see 25 C. F. R. 61.1-61.29.

²⁹ Osage Allotment Act of June 28, 1906, sec. 7, 34 Stat. 539, 545. For a discussion of this statute, see Chapter 23, sec. 12A.

SECTION 4. SOURCES OF INDIVIDUAL PERSONAL PROPERTY-INDIVIDUALIZATION OF TRIBAL FUNDS

A second important source of individual funds is the individualization of tribal funds.³⁰ Since tribal funds generally repre-

³⁰ The nature of tribal funds is discussed in Chapter 15; the right of the individual to share in tribal funds is discussed in Chapter 9. On administrative power over tribal funds, see Chapter 5, sec. 10, and Over individual funds, see *ibid.*, sec. 12. On regulations regarding moneys, tribal and individual, see 25 C. F. R. 221.1-233.7.

sent the income from disposition of tribal lands, the Federal Government has commonly extended the restrictions on the land to the proceeds therefrom. By a further extension, Congress has frequently imposed, as conditions to the right of the individual to participate in tribal funds, certain restrictions affecting his use of the funds after they have become individualized.³¹

³¹ See Chapter 9.

By the Act of March 2, 1907,³³ Congress provided generally for the distribution of tribal funds among individuals. Those Indians whom the Secretary of the Interior believed capable of managing their affairs could have placed to their credit upon the books of the United States Treasury their pro rata share of the tribal funds held in trust by the United States, and they could draw upon this credit without any further governmental control.³³ Section 2 of the act provided that the Secretary of the Interior might pay to disabled Indians their shares in tribal property, under such rules and conditions as he might prescribe. As later amended,³⁴ this section authorizes the Secretary of the Interior upon application by an Indian "mentally or physically incapable of managing his or her own affairs," to withdraw the pro rata share of such Indian in the tribal funds, and to expend such sums on behalf of the Indian.

Section 28 of the Appropriation Act of May 25, 1918,³⁵ which specifically excluded from its scope the funds of the Five Civilized Tribes and the Osages, in Oklahoma, authorized the Secretary of the Interior to withdraw tribal funds from the Treasury of the United States and to credit recognized members of the tribe with equal shares. However, this authority was revoked by section 2 of the Act of June 24, 1938.³⁶ Nevertheless, the Indian may still apply for funds as his pro rata share in tribal assets, under the Act of 1907.³⁷ The granting of such applications is contrary to the general administrative policy of conserving tribal funds, but in special circumstances such pro rata distributions are still made. It has been held by the Interior Department that, under section 16 of the Act of June 18, 1934,³⁸ such applications must receive the approval of the tribal council, if the tribe in question is organized under that act.³⁹

The individual may be awarded, by special statute, a specified sum from the tribal funds on deposit in the United States Treasury. A typical act is the Act of February 12, 1932,⁴⁰ providing for payment of \$25 to each enrolled Chippewa of Minnesota from tribal funds, under such regulations as the Secretary of the Interior may prescribe.

In the individualization of tribal funds, Congress has at various times laid down directions under which the Secretary of the Interior should expend the funds.

In the Act of March 3, 1933,⁴¹ Congress provided for the dis-

³³ 34 Stat. 1221, 25 U. S. C. 119.

³⁴ O. P. Sol. I. D. M. 25258, June 26, 1929.

³⁵ Amended by Act of May 18, 1916. 39 Stat. 123, 128, 25 U. S. C. 121.

³⁶ 40 Stat. 561, 591-592.

³⁷ 52 Stat. 1037.

³⁸ 34 Stat. 1221.

³⁹ Memo. Sol. I. D., September 21, 1939.

⁴⁰ 48 Stat. 984, 987, 25 U. S. C. 476.

⁴¹ 47 Stat. 49. Acts of similar nature are cited in Chapter 9, sec. 6.

⁴² 47 Stat. 1488.

tribution of tribal funds of the Ute Indians. The shares of all were to be deposited as individual Indian moneys⁴² and subject to disbursement for the individual's benefit in the following ways: for improving lands, erecting homes, purchase of equipment, livestock, household goods and in other ways as will enable them to become self-supporting. The shares of the aged, infirm, and other incapacitated members were to be used for their support and maintenance. As for minors, their shares might be invested or spent in the same fashion as prescribed for adults, but when their funds were to be invested or expended, the consent of the parents and the approval of the Secretary of the Interior was necessary.⁴³

Acts providing for the payment of judgments in favor of a tribe may limit the rights of the Indian in individualized tribal funds by the qualification that "the per-capita share due each member . . . be credited to the individual Indian money account of such member for expenditure in accordance with the individual Indian money regulations." "Various resolutions authorizing the distribution of judgments rendered in favor of Indian tribes provide for per capita payments to each enrolled member, such distribution to be made under such rules and regulations as the Secretary of the Interior may prescribe."⁴⁴

By virtue of these acts, Congress has given to the Secretary of the Interior authority over individual funds derived from the tribal property held in trust comparable to the authority over funds derived from the individual's restricted property.⁴⁵

⁴³ "Individual Indian moneys are funds, regardless of derivation, belonging to individual Indians which come into the custody of a disbursing agent." 25 C. F. R. 221.1. See sec. 8. *infra*, for a discussion of these regulations.

⁴⁴ *Id.*, Act of June 1, 1938. 52 Stat. 605, as amended by sec. 2(b), Act of August 7, 1939, Pub. No. 325, 76th Cong., 1st sess. (Klamath).

⁴⁵ Joint Resolution, June 20, 1936. 49 Stat. 1569, authorizing distribution of judgment in favor of Gros Ventre Indians among enrolled members.

⁴⁶ The Joint Resolution of June 20, 1936. 49 Stat. 1568, provides for a per capita payment of \$85, and places the remainder of the fund awarded to the Blackfeet Tribe at the disposal of the tribal council and the Secretary of the Interior.

Under the Joint Resolution of April 29, 1930. 46 Stat. 260, the Secretary of the Interior is authorized to pay a judgment in favor of the Iowa Tribe to members of the tribe in pro-rata shares. The competent members receive their entire shares in cash; the shares of the others, including minors, are deposited to the individual credit of each and subject to existing laws governing Indian moneys.

The right of the Chippewa allottee on the Lac du Flambeau Reservation to the proceeds derived from the sale of tribal timber is controlled by the Act of May 19, 1924. 43 Stat. 132. After providing for the sale under rules and regulations prescribed by the Secretary of the Interior, the act states that the net proceeds are to be distributed per capita. Those whom the Secretary shall deem competent to handle their own affairs shall receive their shares. As for the others, their shares are deposited to their individual credit and paid to them or used for their benefit under the Secretary's supervision.

⁴⁷ See Chapter 5, secs. 11 and 12.

SECTION 5. SOURCES OF INDIVIDUAL PERSONAL PROPERTY-PAYMENTS FROM THE FEDERAL GOVERNMENT

A third source of individual personalty comprises the various forms of direct payment to individual Indians from the Federal Government. In this connection a distinction must be drawn between obligations assumed by the Federal Government towards the various tribes, by reason of the sale of tribal lands or otherwise, and obligations running directly to the members of the tribes. Problems arising out of the former situation are dealt with elsewhere.⁴⁷ For the present we are concerned only with the situations in which the Federal Government has under-

taken to make payments, in money or goods, to individual Indians.

Gifts were sometimes made for the purpose of civilizing the Indians by giving them agricultural aids and clothes.⁴⁸ Gifts

⁴⁸ The Act of March 30, 1802, sec. 13, 2 Stat. 139, 143, provides in part:

That in order to promote civilization among the friendly Indian tribes, and to secure the continuance of their friendship, it shall be lawful for the President of the United States, to cause them to be furnished with useful domestic animals, and implements of husbandry, and with goods or money, as he shall judge proper . . .

In the Appropriation Act of March 3, 1875. 18 Stat. 420, are numerous appropriations for agricultural pursuits. Miamies of Kansas are given

⁴⁷ See Chapters 9 and 15.

were also justified simply on the ground that the Indian needed the bounty for subsistence.⁵⁷

A. ANNUITIES⁵⁸

Periodic payments of either money or goods are called "annuities." According to the terms of the instrument, an annuity may be a specific amount for a specified number of years,⁵⁹ or it may be a specified amount for life⁶⁰ or while the Indians are at peace.⁶¹

Frequently the individual recipients of annuities were the chiefs or others of the tribe who were influential in keeping the peace and in treaty making.⁶² Treaties often provided that a sum of money or other gifts would be paid when a particular treaty went into effect.⁶³ At times the United States would promise to pay the salary of the chief annually⁶⁴ but the policy behind this was probably no different than that fostering the payment of annuities.

money for grain and seed for farming purposes (p. 432); money in aid of agricultural pursuits, to be given to Poncas (p. 436); River-Crows (p. 437). Appropriations for clothes are made to Bannocks (p. 440); to Shoshones (p. 440); Six Nations of New York (p. 441); Cheyennes and Arapahoes (p. 424); Crows (p. 429).

The Acts of April 30, 1888, sec. 17, 25 Stat. 94, 101, and of March 2, 1889, sec. 17, 25 Stat. 888, 895, dividing the Sioux lands, provide for the distribution of, cattle and farming implements among the Sioux allottees.

⁵⁷ The Appropriation Act of March 3, 1875, 18 Stat. 420, makes an appropriation for subsistence to those Apaches of Arizona and New Mexico "who go and remain upon said reservations and refrain from hostilities, . . ." (p. 423); appropriation for the aged, sick, infirm and orphans among the Assiniboines (p. 424); the Blackfeet, Bloods, and Piegans (p. 424).

The Appropriation Act of June 25, 1864, 13 Stat. 161, provides for the subsistence of Indians who remain loyal to the United States, including members of the Five Civilized Tribes and affiliated tribes (pp. 180-181). The Appropriation Act of March 3, 1865, 13 Stat. 541, provides for the subsistence of a number of Chippewas of the Mississippi.

In the Treaty of August 9, 1814, with the Creek Nation, 7 Stat. 120, the United States agreed to furnish members of the Creek Nation with the necessities of life until they were able to take care of themselves to some extent.

⁵⁸ For regulations regarding annuity and other per capita payments, see 25 C. F. R. 224.1-224.5.

⁵⁹ By the Treaty of October 7, 1863, Art. 10, 13 Stat. 673, 675, with the Tabeguache Band of Utah Indians, each family receives a number of sheep and cattle annually for 5 years.

⁶⁰ Treaty of January 20, 1825, with Choctaw Nation, 7 Stat. 234; Treaty of September 26, 1833, with Chippewa, Ottawa, and Potawatamie Indians, 7 Stat. 431; Treaty of September 24, 1829, with Delaware Indians, 7 Stat. 327; Treaty of January 7, 1806, 7 Stat. 101, 102; (Cherokee chief receives \$100 per year for life); Treaty of September 20, 1828, 7 Stat. 317, 318 (Potawatamie chief receives \$100 per year in goods for life).

⁶¹ Appropriation Act of March 3, 1875, 18 Stat. 420, 423 (supplies to those who refrain from fighting). Act ratifying agreement with Utes, April 29, 1874, 18 Stat. 36; 35.

⁶² Art. V of the Treaty with the Chippewas, October 2, 1863, 13 Stat. 667, provides that the Chippewa chiefs may receive a house and annuity, to encourage Peace and to encourage others to become orderly.

Treaty with the Chickaaw, October 19, 1818, 7 Stat. 192, 194. Because of their friendliness to the United States, the chiefs receive \$150 in cash or in goods.

⁶³ Appropriation Act of July 2, 1836, 5 Stat. 73, 75.

⁶⁴ The Act of April 29, 1874, 18 Stat. 36, provides for the payment of salary to the head chief of the Ute Nation by the United States at the rate of \$1,000 per year for the term of 10 years, or as long as he remains head chief and at peace with the United States.

The Act of December 15, 1874, 18 Stat. 291, provides for a salary of \$500 per year by the United States for a term of 5 years. Accord: Treaty of June 11, 1855, 12 Stat. 957 (salary of Nez Perce chief to be paid); Treaty of June 25, 1855, 12 Stat. 963 (salary of chief of Drgoni bands to be paid); Treaty of June 9, 1855, 12 Stat. 951 (salary to be paid to Yakama chief).

In order to induce Indians to settle upon homesteads⁵⁷ or accept allotments,⁶⁵ Congress generally provided that those Indians who accepted the benefits of homestead and allotment acts would not lose any rights in annuities and other personalty and that those Indians who did receive allotments would be assured of receiving compensation for damages occasioned by trespass of Indians who had not received allotments by payments from annuities due the trespassers.⁶⁶

B. METHOD OF PAYMENT

While ordinarily the obligations of the United States under treaties and agreements with the Indian tribes were considered obligations owing to the tribes, even where the Federal Government assumed the task of paying over the promised sums per capita to the members of the tribe,⁶⁷ there have been cases in which the obligation of the United States ran directly to individual Indians.

In the treaty with the Shawnees on May 10, 1854,⁶⁸ the United States was to pay certain sums to these Indians. Section 8 of the treaty provides that competent Shawnees should receive their portions in seven annual payments and in money. As for those incompetent to manage their own affairs, the President was to dispose of their portion in a manner he believed to be for the best interests of them and of their families after consulting the Shawnee Council. The funds due the minor orphan children were to be appropriated by the President in a manner considered to be for their best interest.

The payments due the orphan children became a matter of litigation which reached the Supreme Court of the United States in 1894 in the case of *United States v. Blackfeather*.⁶⁹ The Court discusses the treaty of 1854 and finds that under it the President had determined that the orphans' funds should be paid to them in severalty. He committed some of the money to a United States Indian superintendent for distribution but said officer embezzled it. Another portion was paid to guardians of the orphans who were created by the Shawnee Council, but because of laches or dishonesty, this portion never reached the orphans. The Shawnee Tribe brought this action to collect this money from the Government. In its decision, the court holds that the tribe has no authority to sue for these moneys under a jurisdictional act authorizing suit for moneys claimed in tribal capacity. The Court also holds that the Government is not liable to the tribe for the portion paid to the guardians appointed by the tribal council, but intimates that the Government may have a moral obligation to reimburse the money embezzled by the Indian superintendent.⁷⁰

Because of difficulties of the type that arose under the Shawnee treaty and described above, Congress in 1862 passed an act prohibiting the payment of money to any person appointed by any Indian council on behalf of incompetent or orphan Indians, and providing that said moneys shall remain in the United States Treasury at 6 percent interest until ordered to be paid by the Secretary of the Interior.⁷¹

⁵⁷ Appropriation Act of March 3, 1865, 13 Stat. 541, 562, sec. 4, relating to Stockbridge and Munsee Indians; Appropriation Act of March 3, 1875, 18 Stat. 402, 420, sec. 15 (general act).

⁵⁸ Act of March 3, 1843, 5 Stat. 645 (Stockbridge).

⁵⁹ Act of June 14, 1862, 12 Stat. 427 (general act).

⁶⁰ See Chapter 15, secs. 22-23.

⁶¹ 10 Stat. 1053.

⁶² 155 U. S. 180 (1894).

⁶³ In the Appropriation Act of July 7, 1884, 23 Stat. 236, 247, an appropriation was made for that purpose.

⁶⁴ Sec. 6, Act of July 5, 1862, 12 Stat. 512, 529-530, which is embodied in R. S. § 2108 and 25 U. S. C. 159.

SECTION 6. SOURCES OF INDIVIDUAL PERSONAL PROPERTY-PAYMENTS OF DAMAGES

The Indian may receive funds because of being dispossessed from all or some of his lands. Acts or treaties which convey or reserve to the Indian tribe, or to its members certain rights in land usually provide that the United States guarantees to them security and protection in the exercise of such rights.⁶⁵ The right of the individual to receive compensation for damages to his lands and property used in connection with it is derived in part from such provisions.

The loss of his land may be occasioned by the Government's taking.⁶⁶ A more frequent disposition of the Indian's land occurs when Congress grants rights-of-way across the land for railroad and similar purposes. Some treaties, such as the 1854 treaty with the Shawnees,⁶⁷ provide specifically for payment to Indians for any roads made through their lands. The acts granting such rights-of-way provide for payment of compensation for the taking of the land and for any damages done to his other property, such as chattels.⁶⁸ Although the property taken may have been restricted, nevertheless, it is a general policy of the acts to free from Government control the expenditure of the funds by making provision only for the supervision of payment to the Indians. The Act of May 6, 1910,⁶⁹ is a typical illustration. It provides that the railroad company shall pay to the Secretary of the Interior the amount of the damages and compensation. The act continues: "that the damages and compensa-

⁶⁵ Treaty with Miamies, November 6, 1838. 7 Stat. 569, 571. See chapter 15, sec. 10.

⁶⁶ The Act of April 28, 1924, c. 134, 43 Stat. 111, appropriates a sum of \$85,000 for the benefit of dispossessed Nisqually Indians. Sec. 2 provides that the sum "shall be expended, in the discretion of the Secretary of the Interior, for the benefit of the said dispossessed families or individual Indians, under such rules and regulations as he may prescribe."

⁶⁷ May 10, 1854, sec. 13, 10 Stat. 1053, 1058.

⁶⁸ See Chapter 15, secs. 1, 17.

⁶⁹ 36 Stat. 349.

tion paid to the Secretary of the Interior by the railway company taking any such land shall be paid by said Secretary to the allottee sustaining such damages."

Similarly, many acts or treaties providing for the removal of the Indian from the land of which he has possession stipulate that he is to receive money, or other goods as payment for any improvements he made on the land or chattels he must leave behind.⁷⁰

Related to moneys and other personal property given to Indians for property left behind are the gifts made to the individual Indians to aid them in their emigration from the lands ceded.⁷¹

⁷⁰ Treaty with Cherokees, July 8, 1817, 7 Stat. 156, 158, provides that the Cherokee emigrants are to be paid for loss of improvements by receiving rifles and other personal property; Treaty with Wyandots, etc., September 29, 1817, 7 Stat. 160, 166; Treaty with Chickasaws, October 19, 1818, 7 Stat. 192, 194; Treaty with Choctaws, October 18, 1820, 7 Stat. 210, 212-213; Treaty with Quapaws, November 15, 1824, 7 Stat. 232; Article 11, Treaty with Creeks, January 24, 1826, 7 Stat. 286, 288; Treaty with Cherokees, May 6, 1828, 7 Stat. 311, 313-314; Treaty with Senecas, February 28, 1831, 7 Stat. 348, 349; Treaty with Wyandots, etc., July 20, 1831, 7 Stat. 351, 352; Treaty with Ottaways, August 30, 1831, 7 Stat. 359, 360; Article 9, Treaty with Cherokees, December 29, 1835, 7 Stat. 478, 482; Treaty with New York Indians, January 15, 1838, 7 Stat. 550; Treaty with Menominees, October 18, 1848, 9 Stat. 952, 953; Treaty with Stockbridges and Munsees, February 5, 1856, 11 Stat. 663, 667; Treaty with Senecas, November 5, 1857, 11 Stat. 735, 737; Act of April 30, 1888, 25 Stat. 94, 103 (Sioux); Act of March 2, 1889, 25 Stat. 888, 897-898 (Sioux); Act of February 20, 1895, 28 Stat. 577 (Ute).

⁷¹ Appropriation Act of July 29, 1848, sec. 4 (R. S. § 3689) and 5, 9 Stat. 252, 264-265 (Each Cherokee to receive a sum of money when he moves west); Joint Resolution, March 3, 1845, 6 Stat. 942 (Those Miamies moving west of the Mississippi receive tribal annuities); Treaty with Choctaws, September 27, 1830, Art. 20, 7 Stat. 333, 338 (Each emigrant to: Choctaw warrior receives rifle, etc.); Treaty with Cherokees, December 29, 1835, Art. 8, 7 Stat. 478, 482 (Money for moving expenses paid).

SECTION 7. FEDERAL PROTECTION OF INDIVIDUAL PERSONAL PROPERTY

Though the Indian enjoys the legal capacity to enforce his property rights in court, nevertheless his ability to do so has often been handicapped by unfamiliarity with legal processes and rules of law.⁷² To aid the Indian in the protection of his rights and to supplement these rights, the Government has at various times sought to give additional protection to the individual Indian. The extent to which the United States may bring suit or intervene in litigation affecting Indian property⁷³ and the statutory responsibility of the United States attorneys in Indian litigation are discussed elsewhere.⁷⁴

In various treaties and acts of Congress may be found provisions informing the Indian of his rights respecting depredations committed by whites and by other Indians, or provisions creating rights of damages therefrom.

Treaties may contain declaratory provisions stating the Indian's rights of property. Article 10 of the Treaty of November 6, 1838, with the Miamies⁷⁵ provides in part: "the United States shall protect the said tribe and the people thereof, in their rights and possessions, against injuries, encroachments, and oppressions of any person or persons, tribe or tribes whatsoever."

In the Treaty of Dancing Rabbit Creek⁷⁶ with the Choctaws, Article 12 protected the Indian's personalty. It provided in part:

Private property to be always respected and on no occasion taken for public purposes without just compensation being made therefor to the rightful owner. * * * And if a white man unlawfully take or steal any thing from an Indian, the property shall be restored and the offender punished.

Similar provisions protecting the Indians' rights to their personalty are found in acts of Congress. As early as 1796 Congress indicated a policy to protect Indian property by the passage of the Indian Trade and Intercourse Act, of May 19, 1796.⁷⁷ It provided that any white person who takes Indian property shall upon conviction of crime be sentenced (in addition to the usual sentence) to pay to the Indian to whom the property taken belongs, a sum twice the just value of such property. Furthermore, the United States Treasury is directed to pay the Indian the just value of stolen or destroyed property if compensation cannot be secured from the white criminal. This protection was continued by subsequent acts.⁷⁸

⁷⁵ Entered into September 27, 1830, 7 Stat. 333, 335, proclaimed February 24, 1831.

⁷⁶ Sec. 4, 1 Stat. 469, 470.

⁷⁷ Act of March 3, 1799, sec. 4, 1 Stat. 743, 744-745; Act of January 17, 1800, sec. 4, 2 Stat. 6; Act of March 30, 1802, sec. 4, 2 Stat. 139, 141; Act of June 30, 1834, sec. 16, 4 Stat. 729, 731, R. S. § 2154, § 2155, 25 U. S. C. 227, 228.

⁷² See Chapter 8, sec. 6.

⁷³ See Chapter 19, sec. 2A(1) and (3).

⁷⁴ See Chapter 12, sec. 8.

⁷⁵ 7 Stat. 569, 571.