

CONFERRING UPON THE COURT OF CLAIMS JURISDICTION IN
CASES OF CLAIMS OF THE CROW TRIBE OF INDIANS

APRIL 22, 1926.—Committed to the Committee of the Whole House on the state
of the Union and ordered to be printed

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

REPORT

[To accompany S. 2868]

The Committee on Indian Affairs, to whom was referred the bill (S. 2868) conferring jurisdiction upon the Court of Claims to hear, examine, adjudicate, and render judgment in claims which the Crow Tribe of Indians may have against the United States, and for other purposes, having considered the same, report thereon with a recommendation that it do pass with the following amendments:

Strike out all of section 1 following the enacting clause and insert in lieu thereof:

That jurisdiction be, and is hereby, conferred upon the Court of Claims, with right of appeal to the Supreme Court of the United States by either party, notwithstanding lapse of time or statutes of limitations, to hear, adjudicate, and render judgment in any and all claims arising under or growing out of the treaty of Fort Laramie, dated September 17, 1851 (Second Kappler, page 594), between the United States and the Crow Indian Nation, and the treaty dated May 7, 1868 (Fifteenth Statutes, page 649), between the United States and the Crow Indian Nation, or arising under or growing out of the Executive order dated July 2, 1873 (First Kappler, page 855), or any subsequent Executive order, the act of Congress approved April 5, 1874 (Eighteenth Statutes, page 28), or any subsequent act of Congress or agreement with said Crow Indian Nation, which said Crow Indian Nation or any branch thereof may have against the United States, which claims have not heretofore been determined and adjudicated on their merits by the Court of Claims or the Supreme Court of the United States; and jurisdiction is hereby conferred upon the said courts to determine whether or not any provision in any such treaty or Executive order has been violated or breached by any act or acts of Congress or by any treaty made by the United States with any other Indian tribe or nation, and, if so, to render judgment for the damages resulting therefrom.

Page 4, line 3, strike out the balance of the section after the word "Indians" except the comma and insert "including gratuities."
Page 4, line 7, after the word "order," insert "set forth and referred to in section 1."

Pages 4 and 5, strike out all of section 5 and insert in lieu thereof:

Upon final determination of such suit or suits the Court of Claims shall have jurisdiction to fix and determine a reasonable fee, not to exceed 10 per centum of the recovery, together with all necessary and proper expenses incurred in preparation and prosecution of the suit, to be paid to the attorneys employed by the said tribes or bands of Indians, or any of them, and the same shall be included in the decree and shall be paid out of any sum or sums found to be due said tribes.

The bill provides that the Crow Indians of Montana may present to the Court of Claims for a rendition of judgment any claim which the tribe may have against the United States. These Indians claim rights growing out of the Fort Laramie treaty of September 17, 1851, and the treaty of May 7, 1868, and subsequent acts of Congress relating to the Crow Indians. The nature of these claims so far as now known is quite fully set forth in a memorandum hereto attached.

MEMORANDUM IN RE CROW CLAIMS

The first treaty made between the United States and the Crows was one of peace and friendship, dated August 4, 1825. (7 Stat. 266, 2 Kappler, 244.)

The basic treaty under which the Crows were granted a defined reservation was that of Fort Laramie of September 17, 1851. (2 Kappler, 594.) The boundaries of this reservation are as follows:

"The territory of the Crow Nation, commencing at the mouth of Powder River, on the Yellowstone; thence up Powder River to its source; thence along the main range of the Black Hills and Wind River Mountains to the headwaters of the Yellowstone River; thence down the Yellowstone River to the Twenty-Five Yard Creek; thence to the headwaters of the Muscle Shell River; thence down the Muscle Shell River to its mouth; thence to the headwaters of Big Dry Creek, and thence to its mouth."

Embracing about 37,500,000 acres. (Joint Congressional Committee Northern Pacific Land Grants, vol. 4, p. 1934.)

The Senate on May 24, 1852, ratified this treaty with an amendment reducing the number of years in which the \$50,000 to be paid the Indian parties to the treaty from 50 years to 10 years, with an additional five years in the discretion of the President, which discretion was exercised, and the payments continued for 15 years, or until 1867.

This amendment was submitted to the several tribes, parties to the treaty, for ratification, the last ratification being made by the Crows on September 18, 1854.

On account of inadvertence on the part of the officials of the Government, the formal ratification of the Fort Laramie treaty was never certified to the State Department, and in consequence the treaty was never published in the Statutes at Large, nor was record made of such ratification on the records of the Interior Department, and from 1854 on and up to within the past year it was believed the Fort Laramie treaty was not in force, and Army officers, Indian officials, the several tribes of Indians concerned, and those interested in Indian affairs, were ignorant of the formal ratification of the amendment to the treaty by all the Indians, parties to said treaty, and didn't know the treaty was in full force and effect.

In consequence of the neglect on the part of the officials of the Government in this respect, the rights of the Indians, parties to the Fort Laramie treaty, have been disregarded, and this was the case with the Crows. When the Crow treaty of May 7, 1868, was made neither the Crows nor the Government knew that the Crows owned a defined reservation as granted by the treaty of Fort Laramie, and negotiations on this basis of information resulted in a treaty concerning which the Assistant Commissioner of Indian Affairs, in his testimony before the Joint Congressional Committee Investigating Northern Pacific Railroad Land Grants, volume 4, page 1926, replying to the following questions of Congressman Raker, said:

"Mr. RAKER. What does the record show that the Crow Indians received, if anything, for making the treaty of 1868 and reducing the amount of land specified in the treaty of 1851?"

"Mr. MERITT. In reading the treaty, gentlemen of the committee, I was impressed with how little they got for the large amount of territory they gave up under that treaty of 1868.

"The Crows gave up approximately 30,000,000 (37,500,000) acres of land under that treaty of 1868, and it is claimed that some of the land was very valuable for mineral and other purposes, and they got very little in return for it.

"Mr. RAKER. So that the decisions that were referred to by you, and may have been quoted, regarding the Crow treaty of 1851, show that the court did not have the actual facts as to the confirmation of that treaty by both parties before it?

"Mr. MERITT. That is clear. As I stated in my main presentation to the committee, I think it was unfortunate that that error should have occurred because the courts have been misled, the compilers of the statutes have been misled, and some of the bureaus of the Government have been misled in giving an interpretation to these matters."

(Mr. Meritt should have added "the Indians were also misled.")

"Mr. RAKER. The fact that the treaty was not filed with the Secretary of State, together with the amendment and acceptance does not in the least, does it—or if it does, so state—affect the validity of the treaty?

"Mr. MERITT. In my judgment, it does not affect the validity of the treaty in the least. That was simply a ministerial duty (p. 1928.)

"Mr. RAKER. What do the records of the Indian Office show, if anything, as to who instigated the making of this treaty in 1868?

"Mr. MERITT. The records show that the Federal Government instigated that action.

"Mr. RAKER. In what way? What caused it to do it?

"Mr. MERITT. You are talking about the treaty of 1868?

"Mr. RAKER. I am talking about the treaty of 1868.

"Mr. MERITT. The President appointed a commission under the act of Congress of July 20, 1867, and it was the result of that commission appointed by the President that this treaty of 1868 was negotiated" (p. 1936).

This commission, composed of Army officers, which negotiated with the Crows for the treaty of 1868, stated in its report that the treaty of 1851 had never been ratified by the Senate nor the assent of the Indians given to the changes made by the Senate.

Now, it is obvious that had the Crows known that they owned and were in possession of approximately 37,500,000 acres of land under the treaty of Fort Laramie of 1851, and had they not been misled, they would not knowingly and willingly have given 32,500,000 acres to the Government, retaining only about 5,000,000 acres of their Fort Laramie treaty lands in consideration of what Mr. Meritt said had "impressed him how little they got for the large amount of territory the Crows gave up by that treaty of 1868." Furthermore, millions of acres of the Crow lands granted them under the Fort Laramie treaty were by misapprehension of the validity of the Fort Laramie treaty given the Northern Pacific Railroad Co. under its land grants of 1864 and 1870, which the Government is now attempting to recover. The Crows have a claim under the treaties of 1851 and 1868 on the ground that it was the fault of the Government of the United States that the Crow Indians were kept in ignorance of their rights when the treaty of 1868 was made and in consequence received an inadequate consideration. Mutual mistake of both parties to a contract can always be remedied in a court of equity.

The Crows also have a claim for their share of annuities under the treaty of 1851, as official reports show the supplies and goods furnished them instead of money fell far short both in quantity and quality from what was due them.

The claim of the River Crows as a branch of the Crow Tribe of Indians should be specifically mentioned in any jurisdictional act passed so as to make plain that this claim is included in the act. It is well known that some years after the Fort Laramie treaty was made, at which time they numbered about 3,500 Indians, the Crows divided into what is known as the River Crows and the Mountain Crows, the two reuniting about the year 1874.

The River Crows had a claim against the United States for lands which they occupied in conjunction with the Gros Ventres and other Indians on the upper Missouri where they had for years been domiciled and treaties were made with them which were not ratified, and subsequently a reservation was established for

them by Executive order of July 2, 1873, and by act of Congress of April 15, 1874 (18 Stat. 28; Kappler, vol. 1, 149), whereby a certain tract of country on the upper Missouri River and extending along the northern boundary of the State of Montana was set apart for the River Crows, Gros Ventres, and certain other tribes; that when the River Crows rejoined the Mountain Crows by force of the Government and this reservation subsequently sold, the River Crows never received any consideration for their part of said reservation. Full statement of their claim has already been filed by us with the office.

The Crow Indians also make claim under the treaty of May 7, 1868, which in part is bound up with the Fort Laramie treaty of 1851, and these two treaties should be considered together, and the claims to lands growing out of the 1851 treaty and disposed of under the treaty of 1868 for a grossly inadequate consideration should be presented to the court for adjudication.

The Crows also claim that under the treaty of May 7, 1868, the United States agreed to construct warehouses, buildings, blacksmith shops, sawmills, school-houses, etc., and furnish blacksmiths and carpenters and millers for a specified number of years; that money for this purpose in some instances was not appropriated and when appropriated the money was applied to purposes other than those stipulated.

Under the Executive order of July 2, 1873, and act of Congress of April 15, 1874, a defined reservation was granted to the River Crows affiliated with and a part of the Crow Indian Nation, which reservation was later sold and nothing paid to the Crows.

Under the act of May 11, 1882, ratifying agreement of June 12, 1880, certain lands belonging to the Crows were ceded, and the money arising therefrom was not expended as intended by the stipulations of the agreement and act of Congress, and no accounting has been rendered the Crows by the Government.

Under act of May 1, 1888 (25 Stat. 113), relating to reservation set apart for the River Crows by the act of April 15, 1874, and providing for the cession of lands, the United States took from the Crows their lands, but no compensation therefor was given them.

The agreement of December 8, 1890, ratified by the act of March 3, 1891 (26 Stat. 989; 1 Kappler, 430), ceded part of the Crow Reservation and stipulated certain sums of money arising from the sale should be expended for certain purposes which the Crows claim were not expended as stipulated and in some instances misappropriated.

Under agreement of August 27, 1892, authorized by the act of July 13, 1892 (27 Stat. 120; 1 Kappler, 450), the Crows claim misappropriation of funds arising thereunder.

Under the act of May 27, 1902 (32 Stat. 245; 1 Kappler, 754), covering Crow herd fund, accounting of which is demanded, all books, papers, and accounts being in the possession of the United States.

Under the act of April 27, 1904 (33 Stat. 352; 3 Kappler, 87), further cession of lands was made, proceeds of which were to go to Crows. No accounting had and misappropriation alleged as to purchase of cattle, construction of irrigation works, etc.

Under act of June 4, 1920 (41 Stat. 751), section 11, certain moneys were stipulated to be expended for specified purposes. These stipulations were not carried out as intended, and money diverted to other purposes. Oil leases on tribal lands were executed to certain companies and royalties arising thereunder have not been accounted for.

KAPPLER & MERILLAT,
Attorneys for the Crow Tribe of Indians.

WASHINGTON, D. C., February 27, 1926.

The report of the Secretary of the Interior on this bill is attached hereto and made a part of this report.

THE SECRETARY OF THE INTERIOR,
Washington, February 20, 1926.

Hon. J. W. HARRELD,
Chairman Committee on Indian Affairs,
United States Senate.

MY DEAR SENATOR HARRELD: Further reference is made to your letter of February 3, 1926, inclosing for a report a copy of S. 2868 conferring jurisdiction upon the Court of Claims to hear, examine, adjudicate, and enter judgment in

any claims which the Crow Indians may have against the United States and for other purposes. After certain changes or amendments are made as hereinafter suggested, this department will offer no objection to the enactment of the bill.

The alleged claims of these Indians, as ascertained from a recent field investigation, appear to be on account of benefits which the branch of the tribe known as the River Crows have been given on the Crow Reservation, Mont., created by the treaty of May 7, 1868 (15 Stat. L. 649). The other branch of the Crow tribe, known as the Mountain Crows, contends that the River Crows were not parties to the said treaty and were therefore not entitled to rights under its provisions.

The records do not show whether the Indians who signed the treaty were all from the Mountain Crow branch of the tribe or whether some of them belonged to the River Crow branch; and there is nothing in the treaty to indicate that it was not intended to benefit the tribe as a whole.

The Indians of the reservation further claim that the \$30,000 annual appropriations made under the act of April 11, 1882 (22 Stat. L. 42), ratifying the agreement of June 12, 1880, were not expended as intended by the stipulations of the agreement. The said act authorized a \$30,000 annual appropriation for 25 years, to be expended under the direction of the President for the benefit of the Indians, assisting them in the erection of homes, procurement of seeds, farming implements, stock, or in cash, as the President may direct. Similar language was used in each of the annual appropriation acts for the remaining payments, and the records of the department show that the money was expended largely for subsistence, agricultural implements, buildings, livestock, clothing, and support, and that beginning with the ninth installment certain sums were also expended for services of employees which were required directly for the benefit of the Indians rather than for administrative purposes.

There seems to be a disposition on the part of some of the Indians also to assert a claim that the moneys appropriated under the agreement of December 8, 1890 (ratified by the act of March 3, 1891, 26 Stat. L. 1039), were not used for the purposes intended by the agreement. The agreement provides substantially for sundry funds to be expended for irrigation construction, agency equipment of various kinds, schools, Indian homes, annuities, cattle, and support. The department records show that the funds appropriated were used principally in the construction and maintenance of irrigation ditches, per capita payments, and the purchase of cattle, all directly for the benefit of the Indians.

In order that the claims of these Indians may be confined in the bill to the particular treaties and acts of Congress under which such claims arise, it is recommended that the following changes or amendments be made:

Eliminate all of section 1 after the enacting clause and substitute therefor the following:

"That jurisdiction is hereby conferred on the Court of Claims with right of appeal to the Supreme Court of the United States by either party as in other cases, notwithstanding the lapse of time or statutes of limitation, to hear, examine, and adjudicate and render judgment in any and all legal and equitable claims arising under or growing out of the treaty of May 7, 1868 (15 Stat. L. 649), or arising under or growing out of the subsequent acts of Congress of April 11, 1882 (22 Stat. L. 42), ratifying the agreement of June 12, 1880, and that of March 3, 1891 (26 Stat. L. 1039), ratifying the agreement of December 8, 1890, which the said Crow Tribe of Indians of Montana may have against the United States, which claims have not heretofore been determined and adjudicated on their merits by the Court of Claims or the Supreme Court of the United States."

Heretofore attorneys' fees have been limited in such bills by the inclusion of the words "and in no event to exceed \$25,000" in the section relating to such fees. Section 5 or the proviso thereof of S. 2868 does not contain this limitation, and the matter is being called to your attention for your consideration.

Change the title of the bill by eliminating the word "any" between the words "in" and "claims" in line 2 thereof.

The Director of the Bureau of the Budget has advised that this report is not in conflict with the financial program of the President.

Very truly yours,

HUBERT WORK.

