THE STORY OF THE "BLACKFOOT CLAIM."

With the acquisition of California, under the treaty of Guadalupe Hidalgo, keener interest was aroused in our eastern States with regard to the settlement of the Pacific coast, the further exploitation of the north Pacific fisheries, and the expansion of Far eastern trade. The opening of Japan to commerce had been discussed in the House of Representatives at Washington as early as 1845. Discovery of gold in California in 1849 greatly increased the rush of immigrants both to California and the northwest coast. Some of these settlers went to the new country by boat, crossing the Isthmus, or going around Cape Horn, but many had to choose the more tedious and dangerous way of the overland route across the plains. The question of safe and easy transportation from the eastern states to the Pacific seaboard became one of great importance.

In 1851, in order to promote peace with and among the prairie tribes of the northwest, and thereby obtain safe passage of settlers through the lands claimed by these tribes, and insure the arrival of these settlers at their destinations beyond the Rocky Mountains without loss from attack by hostile Indians, a treaty was made at Fort Laramie with the principal tribes roaming the plains north of the Platte River. This treaty sought to insure peace among the Indians by delimiting the various tribal boundaries, and exacted promises from the Indians to keep peace with each other and with the white men. In this treaty, despite the fact that the Blackfeet Indians were not present, and did not sign it, the Blackfeet territory was, with the consent of the other tribes signing the treaty, and of the United States, defined as taking in the valleys of the Three Forks of the Missouri River, and the country lying between the Missouri and Musselshell Rivers. The Senate ratified the treaty with an amendment reducing the annuity period, and this amendment was assented to by all of the tribes who signed the treaty. Failure to include the Laramie treaty in the Statute books may therefore be regarded in the light of a clerical error.

The Laramie treaty was not a great success. The Indians warred with each other, and harassed the immigrants passing through their country, and the immigrants continued to pass through the Indian country in spite of the tribes, on their journey to the land beyond the Rocky Mountains. But it is well here to state that more immigrants succumbed to disease, exposure, and the privations of the journey, than died as the result of the attacks of the tribe men. A railroad across the Continent to the Pacific coast became a necessity under the circumstances.

A survey for a contemplated North Pacific Railway, to extend from the headwaters of the Mississippi to the Pacific coast, was made by Isaac I. Stevens, of the United States Army, in 1853. Early in 1853 Stevens encountered the Grea yentre Indians, and later a war party of Blackfeet, on the Missouri River between Fort Union and Fort Benton. From contact with these tribes it became apparent that the war which they waged with the Flatheads and Nez Perces, and other tribes west of the Rocky Mountains would render hazardous the running of a railroad through that part of the country. The cause of the perpetual conflict
between the Blackfeet, and their occasional allies, the Prairie Cree Ventres, with the Flatheads and Nez Perces was really quite simple. West of the Rocky Mountains there was, at this time, very little game, and no buffalo. The Flatheads and Nez Perces, with other tribes and bands of Indians west of the mountains, formed large parties and came east to the prairies in search of buffalo meat and hides. There the Blackfeet and Cree Ventres regarded them as trespassers, and treated them without mercy. A desultory, but nevertheless continuous border warfare had been going on for very many years as a result of this question of buffalo meat. This conflict has impressed itself even on the names of certain places. Mullan Pass, which is the point where the Northern Pacific now crosses the Continental Divide, on its line between Helena, and Missoula, Montana, was called by the Blackfeet Masy Pass, a descriptive word, and by many Indian Medicine Rock Pass, because of a legend connected with a rock in the pass. But the French, and French mixed bloods called the pass the Port d'Enfer, or Hell Gate, because they said they would rather go through the gates of Hell than through that pass, and this because it was a favorite lurking place for Blackfoot parties in quest of the scalps and horses of the western Indians. The name of the town of Missoula, which is west of the main divide, at the mouth of the canyon which goes up to Mullan Pass, is derived from a Salish word meaning the place of ambush, or the place of fear. For around this vicinity the pursuing Blackfeet would catch up with, or waylay, the western tribes, when they were safely out of the mountains and on their journey home, laden with meat and hides.

The survey indicated that Mullan, or Hell Gate Pass, was in every way desirable as at which to put a Railroad or a wagon road across the Continental Divide. But before any sort of road could be put through that part of the country, some arrangement must be made between the prairie and the mountain tribes to put an end to their continued war fare on the buffalo question.

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The winter of 1854 was spent by Stevens in Washington, where he was occupied in obtaining from Congress appropriations and proper authority to make treaties on behalf of the United States with the Blackfeet and Cree Ventres, and with the Flatheads, Nez Perces, and other tribes west of the Rocky Mountains. The necessary appropriations were obtained from Congress, and the proper authority was given to Governor Stevens by the Interior department to treat with these Indians.

It is needless to follow the Stevens treaty Commission in their journey through the various tribes, eastward from Puget Sound. About the middle of October, 1855, Stevens, with Commissioner Cummings, who had come up the Missouri with the treaty presents, and other supplies, met the Blackfeet, Cree Ventres, Flatheads and Nez Perces, at the mouth of the Judith River, in what was then the Territory of Nebraska, but is now the State of Montana. At this place, on October 17, 1855, Gov. Stevens and Commissioner Cummings concluded, on behalf of the United States a treaty with the tribes there assembled, which appeared adequate to settle the meat war being waged between the prairie and mountain tribes, and sufficient to permit the construction of railway through this part of the country, should that be desired.

The treaty provided that the Blackfeet, with their allies the
Prairie Cree Ventres, who are considered in the treaty as a part of the Blackfeet, declared consent and agree that such of the lands described in the Laramie treaty as Blackfeet territory as were embraced in the valleys of the Three Forks of the Missouri River should be a Common Hunting Ground for all of the tribes, parties to the treaty for a period of ninety-nine years. This provision created a hunting preserve in a very rich game country, of about thirty thousand square miles in extent, to the south of where Helena, Montana, now stands. Within this preserve the Blackfeet, Cree Ventres, Flatheads and Nez Percés should hunt in common, and neither tribe could claim exclusive rights, or maintain permanent habitations within the preserve.

The parties to the treaty agreed that the country north of the hunting ground, as far as the Canadian line, and east and south along the Musselshell and Missouri Rivers, to a point where the Milk River enters the Missouri River, should be the territory of the Blackfeet Nation. The only reservations made in the treaty in favor of the United States as to the Blackfeet territory and the hunting ground were those whereby the United States could establish post roads, and telegraph lines through this country, that citizens of the United States should have free navigation of streams, and that stone, timber, and other materials could be used by the United States in the construction of post roads, telegraph lines, forts, agency buildings, and other necessary structures.

The Indians, in this treaty, agreed to let white men reside in, and pass unmolested through their territories, and the United States engaged to protect the Indians against invasion or depredation by white men. The Blackfeet and Cree Ventres were provided with annuities in consideration of their rights as they had ceded in the treaty. As the territory set aside for the Indians by the treaty was at the time not sought after by white men, the liberality of the terms and provisions of the treaty require no further explanation beyond that fact. The west coast was the country sought after at that time, and any adjustment which made feasible a road through to the west coast was to be considered a desirable adjustment.

The treaty of the Judith was concurred in by the Senate, without amendment, and was proclaimed by Franklin Pierce, President of the United States, in 1858.

The report of Superintendent Cumming to the Indian Department in 1858 would indicate that the treaty of the Judith was, unlike many other treaties, working out in a most desirable manner. The tribes, parties to the treaty were at peace with each other, and were substituting international commerce for war, but in 1858 the reports of the Commissioner of Indian Affairs contain complaints of white invasion into the country set aside by the treaty of the Judith. To explain the causes of this invasion we must turn to Fort Bridger.

Fort Bridger, founded in 1843 by Jim Bridger, trapper and guide, on Black's Fork of Green River, which is west of South Pass, and was intended to take care of immigrants on their way to California, or the northwest coast. By the time the immigrants reached Fort Bridger they were generally in need of readjustment after their difficult journey across the plains, and before embarking on their more difficult journey through the mountains. Feet sore and starved horses and cattle could always be bought, and better horses and cattle always found a ready
market at Fort Bridger. No decent pasturage for horses and cattle in large numbers was available nearer than the valleys of the Three Forks of the Missouri River, about three hundred and fifty miles to the north.

As early as 1850, according to Granville Stuart, Captain Grant and his sons were buying worn out stock from immigrants along the Immigrant Road between Salt Lake and Fort Bridger, and driving them up into the valleys of the Three Forks, where they were fattened, taken back and resold at a profit to other immigrants. This business developed gradually, but by 1858 it would appear that feeding pasturing worn out stock in the valleys of the Three Forks, for the purpose of selling them to immigrants at Fort Bridger was proceeding on a very brisk manner. This is about the period that the old Indians state that the game, and especially the buffalo were scared out of the Hunting Ground by white men. The valleys of the Three Forks made up the Hunting Ground as defined by the treaty of the Judith. When James and Granville Stuart first went to this Hunting Ground to pasture cattle in 1858, if they saw any buffalo there they did not mention the fact. It is true that the Government had promised to protect the Indians from invasion or depredation by white men, but it must also be remembered that by 1858 the first mutterings of the approaching Civil War were audible, and the Government was too much employed in attempting to avert that catastrophe, to pay attention to events going forward in such a remote quarter as the head waters of the Missouri River.

The cattle and horse feeding business continued to flourish in the Hunting Ground of the Indians, until a second invasion of white men into that country was produced by the discovery of gold. While minor discoveries of the precious metal had been made as early as 1853 on Gold Creek, and near Fort Owen, yet both of these discoveries were west of the Main Divide, and outside of the Hunting Ground, and resulted in no gold rush as such. They did however stimulate prospecting in these regions, and undoubtedly led to the prospecting which resulted in the first discoveries in the Hunting Ground of the Indians. In 1853 a rich bar was uncovered on Grassheapper Creek, in the Hunting Ground of the Indians, and in a very short time the mining camp of Bannack was established there, with a regular gold stampede in full swing. In 1853 parties from Bannack uncovered pay dirt of a very high grade at Alder Gulch, and the towns of Virginia City, Summit and Nevada, all in the Hunting Ground set aside by the treaty of the Judith, arose almost over night. By the year following the population of Alder Gulch alone is estimated to have been fourteen thousand souls. But now we must turn the narrative for a moment to Washington, where events that have a bearing on this story were taking place.

On March 3, 1853, the President approved an enactment of Congress which provided that the jurisdiction of the United States Court of Claims "shall not extend to any claim against the Government not pending therein on December first, eighteen hundred and sixty-two, growing out of or dependent on any treaty stipulation entered into with foreign nations or with Indian tribes." This act has never since been repealed, and its effect was to deprive Indian tribes of any redress against the Government on account of alleged violations by the Government of treaty stipulations with the tribes, as the Court of Claims was the only Court which could handle such cases. In the light of after events this act makes interesting reading, and it has been adverted to for that purpose.
By Act of Congress approved May 26, 1864, was created the Territory of Montana. This Act carried in the Second proviso of section 1, a clause relating to the treaty rights of the tribes inhabiting the new Territory, by which these treaty rights were fully confirmed, and lands or other rights given the Indians by treaty with the United States, and not extinguished by the United States, with the consent of the tribes were declared to constitute no part of the new territory. If this proviso were taken seriously, and it was not, the new territory had control of a relatively small amount of the acreage within its boundaries. The land and hunting ground set aside in the treaty of the Judith alone took up as much as fifty three per cent of the new territory, and the treaty of the Judith had never been repealed, or modified. If we add to that land set aside for the Creeks, by treaty, and land claimed by the Assiniboinas under the Laramie treaty of 1851, and land held by the Flatheads under the Hell Gate treaty of 1855, we find that the new territory, by the terms of the territorial Act itself, had jurisdiction and control over less than twenty five per cent of its actual area. And Bannack, and later Virginia City, at different periods the territorial Capitals, were located deep in the Common Hunting Ground set aside for the Blackfeet, and other tribes, by the treaty of the Judith.

The settlement by white men of lands claimed under the treaty of the Judith naturally led to conflicts between white men and Indians. Each regarded the other as interlopers. There was never, at any time, as state of war existing between any of the tribes, parties to the treaty of the Judith, and the United States. But bands of these tribes, and groups of individuals, were sometimes in conflict with the United States and its citizens. Joseph's band, a relatively small band of Nez Percés, successfully combatted the armies of the United States in 1877. Charlot's band, a relatively small band of Flathead/s, for many years refused the Presidential mandate to remove from the Bitterroot Valley, to the reservation at Flathead Lake, but committed no hostile act. Small bands of Blackfeet, from time to time, indulged in raids, murdering and plundering white men. Many of these bands thereafter leaving the United States permanently for Canada, where there descendants still reside. While prior to 1884 the settlers on the land and hunting grounds set aside by the treaty of the Judith had suffered to a small extent from depredations by parties of Indians, it was not until the summer of 1884 that the situation really became acute.

The causes for the conflicts by small bands of the Blackfeet and other Indians and the whites were many and varied. During the Civil War, and especially around the time of the Mason-Slidell affair, when a war with Great Britain seemed imminent, many hot headed individuals in Canada considered it their patriotic duty to incite Indians south of the border against the United States, and to furnish them with arms and ammunition. Complaints made from the Blackfeet Superintendent at that time indicate this. Of course neither the Canadian Government nor the Hudson's Bay Company had any hand in the matter. It is simply the misfortune of every Government to have among its citizenry a number of fire eaters who create situations
and precipitate events, which require the lives of better men than they to conclude. Then there was the perennial source of mischief among the Indians, the whiskey trader, who, operating in the country set aside by the treaty of the Judith, in violation of the terms of that treaty and of the Indian Intercourse Act, left murders, disorders and poverty behind him wherever he went. There was the Road Agent, or highwayman, who according to Lanford, the former Secretary of the Virginia City Vigilantes, often hid the traces of their murders and robberies by leaving Indian signs at the scene of the crime. Thus the whites would visit reprisals upon Indians, innocent of these particular acts, and the Indians would visit further reprisals upon whites, who were in all probability innocent parties to the entire transaction. We have the Indian proclivity for horse stealing, not from whites alone but from other tribes as well, and this gave rise to irritation among the settlers, and this irritation resulted in pursuit of the thieves, and occasionally, there was finally the plain evidence, plain at least to the Indians, that the country set aside as Blackfoot territory by the treaty of the Judith, and the country set aside as a hunting ground for a period of ninety nine years by the same treaty, was being invaded by whites in violation of the express terms of the treaty, and that any troops sent out by the United States were being sent, not to protect the Indians against such invasion, as the United States had guaranteed to protect them, but to protect the invaders. But the whites made the same complaint in regard to the troops that the Indians did. To the white settler it appeared that the troops when sent were there more to protect the Indian. In the face of all of these causes for hostility the wonder is not at the extent of the conflict between small bands of Blackfoot and whites, but that the Blackfoot and Gros Ventres as a tribe, did not wage war on the whites. But they never did.

With the growing irritation between Blackfoot and Gros Ventres and white settlers, it seemed best to settle the situation by making a further treaty, which would quiet the Blackfoot claims south of the Teton and Mississippi rivers, and as to their territory and hunting ground, and restrict these Indians to the country between the Teton and Mississippi Rivers, and the Canadian line, which nobody else seemed to want, at that time. Accordingly Thomas Francis Meagher, Acting Governor of Montana Territory, and Gad E. Upson, Special Commissioner, met the Blackfoot and Gros Ventres at Fort Benton, Montana, and there concluded a treaty with these Indians on November 16th, 1866. By the terms of the treaty the Blackfoot and Gros Ventres attempted to cede to the United States not only all of the Blackfoot territory, as set aside by the treaty of the Judith, located south of the Teton and Mississippi Rivers, but attempted to cede the Hunting Ground, in which the Flatheads and Nez Perces had a joint interest with themselves. No attempt was made at that time, nor since, to consult with the Flatheads and Nez Perces in regard to their wishes in the matter. The treaty decreed that it should be obligatory on the Indians from the date of signature, and on the United States from date of ratification. In other words, the Indians, if this is correct, ceded their lands, but the United States was only obliged to pay when the Senate ratified the treaty. Shortly after the treaty bands of the Blackfeet committed depredations against the whites, as well as against the Gros Ventres and River Crows, and in view of this situation the Commissioner of
Indian Affairs recommended to the Secretary of the Interior that a new treaty be made with the Gros Ventres, but that the treaty made November 16, 1885, be not ratified. No record appears that this treaty was ever submitted to the Senate for action, and of course no payments were ever made on account of the treaty.

By 1887, no further action having been taken in regard to Indian claims under the Judith treaty, the situation, according to inhabitants of Montana territory, became more serious. It was reported that the Blackfeet were planning a war, and the Gros Ventres were allied with the Cheyennes and Arapahos, and also planning a war. The militia were called out, intense excitement existed, but the records fail to disclose that these wars ever materialized. The condition of affairs at this point demanded some final and amicable settlement with the Blackfeet and Gros Ventres as to their lands and hunting rights in Montana. So another treaty commission was appointed and sent out to attend to this matter.

On July 13, 1888, and later, on September 1, 1888, W.J. Cullen treated with the Gros Ventres and Blackfeet. On the former date a treaty was concluded with the Gros Ventres at Fort Hawley, and on the latter date a treaty was concluded with the Blackfeet at Fort Benton, both places being in the then Montana Territory. Both treaties were different in regard to the amounts to be paid in consideration of the cessions to be made, but were otherwise identical both in terms and wording. These treaties provided the identical cessions of the treaty of 1885, but increased the amount of compensation for these cessions. The Gros Ventres and Blackfeet attempted to cede the territory given them in the treaty of Judith lying south of the Teton and Missouri Rivers, restricting themselves to the country between the Canadian line, and south to the Teton and Missouri Rivers. They also attempted to cede the Common Hunting Ground to the United States, neither the United States nor the Indians, parties to the treaty, seeming to regard the rights held jointly in the Hunting Ground by the Flatheads and Nez Percés. These treaties of 1888 further provided that in order to launch the Blackfeet and Gros Ventres upon a civilized career, free from debt, the United States would agree to pay claims against the Indians on account of depredations committed by members of their tribes, and debts contracted by members of their tribes for goods, provisions or supplies furnished them by individuals, in a sum not to exceed seventy-five thousand dollars for the Blackfeet and twenty-five thousand dollars for the Gros Ventres. The treaties finally provide that they shall not be binding on either party to them until ratified by the President and Senate, and that no payments shall be made under the treaties until so ratified.

The provision for the payment by the United States of the debts of the Gros Ventres and Blackfeet to traders and other claimants is interesting. It must be remembered that the trader had a certain amount of influence with the Indian. The trader had had considerable contact with the Indian, had frequently intermarried, in many cases, with them, and had Indian relations, and had the power to obtain good will by extending credit, or to demand respect by withholding credit from the Indian. If influence were required in order to get
a treaty asent to by the Indians treated with, a clause inserted in the treaty whereby the trader could benefit to the extent of having a slice of the public funds would naturally be a great help, and would stimulate the trader in efforts to get the Indians to sign the treaty. This phase of the treaties just referred to has been considered, because of the effect they had in the action taken on the treaties at Washington.

The treaties of 1868 were duly forwarded to Washington, and on February 11, 1869 were transmitted by Andrew Johnson, President of the United States, to the Senate. The treaties carried with them the recommendations of the Secretary of the Interior and the Commissioner of Indian Affairs that they be amended by striking out the provisions for payment of debts arising out of depredation claims, and debts to traders. On February 11, these treaties were read for the first time in the Senate, and referred to the Committee on Indian Affairs. Before the Committee had completed its deliberations on these treaties Congress adjourned, mine die, on March 3, 1869, and on March 4, Ulysses S. Grant became President of the United States. The Congress which adjourned under Johnson, saw the last of Indian treaties. This Congress, in that Congress, on February 16, 1869, ratified the Laramie treaty of April 28, 1868, with the Shoshoni; the Fort Bridger treaty of July 3, 1868 with the Shoshoni; and the Treaty of Washington, D.C., of August 13, 1868, with the Nez Perces. All of these treaties were proclaimed by President Johnson, February 24, 1869. These three were the last of the Indian treaties. After the advent of President Grant, and so down to the present, the Indian tribes were dealt with by Act of Congress or by Executive Order. Indeed, by Act of March 3, 1871 it was enacted that no further treaties should be made with the Indian tribes.

After Congress had determined that no further treaties were to be made with the Indian tribes, the tribes who were parties to the treaty of the Judith were placed in a rather remarkable position. The United States had failed to protect them from invasion, as agreed under the treaty of the Judith, and their lands and hunting rights had been invaded by white men. They had no redress in the Courts, for that channel had been closed by Congress in 1863. Three treaties had been negotiated with the Blackfeet and Gros Ventres, ignoring the rights of the other Indians, parties to the treaty of the Judith, and each of these three treaties had been ignored by the United States, who had failed to make them effective. Then an enactment was made by Congress prohibiting further treaties with Indians. Congress might, if it wished to do so, make agreements with the tribes, and enact these agreement into law, or it might make enactments without consulting the tribes at all, and the enactments so made would have the same force and effect as if the consent of the tribes had been obtained. At all events the rights of the Indians under the treaty of the Judith were still unsettled, and the Indians were in a very poor position to have them settled, at this juncture, with any advantage to themselves.

The next Act of Congress affecting the Blackfeet and Gros Ventres was approved April 15, 1874. This Act set apart all of that tract of country in northern Montana which lay east of the Rocky Mountains, and north of Birch Creek, the Marias and Missouri Rivers. The eastern boundary of this tract was the Montana-Dakota line. This Act is mentioned as it has bearing on an agreement
with these Indians which will be later referred to. The Act also empowered the President to place other tribes in the tract set aside, but makes no mention of taking, or quieting title to the lands claimed south of the Teton and Missouri Rivers under the treaty of the Judith.

The Act was followed by an Executive Order, under date of August 13, 1874, whereby that part of the Blackfoot territory, set aside by the treaty of the Judith, which was embraced between the Tetons and gun Rivers, was thrown open for settlement, and this evidently on the theory that it was a part of the public domain, and could be so disposed of by the President.

A series of Executive Orders followed which alternately contracted and expanded the Blackfoot Reserve which was created by the Act of 1874, but as none of them are material to the matter in hand, they will not be taken up. All were evidently based on the assumption that the treaty of the Judith was a dead letter, but on what theory, if any, that assumption was based, is not apparent from the records at hand.

By 1880 it was considered desirable to make another agreement with the Blackfeet, and Gros Ventres, and with the Sioux and Assiniboinés who were now permanent fixtures in this northern reservation. Game was scarce, and the Indians were in great need of food, and the whites were desirous of more land. There was a capital chance to settle the question of title under the Judith treaty to the south of the Missouri and Tetons Rivers, at least insofar as it concerned the Blackfoot and Gros Ventres. It would also have been an excellent time to clear up the relinquishment of the Common Hunting Ground as it affected all of the tribes parties to the Judith treaty, but the opportunity was passed by. In the 1887 agreement, enacted by Congress on May 1, 1888, the cessions made by the Indians, including the Blackfoot and Gros Ventres, were restricted to relinquishing the reserve described in the Act of 1874, that is to say, the lands north of the Birch Creek, the Tetons and Missouri Rivers. Questions relating to rights in the strip between the Tetons and Marias, which was untouched either by the Act of 1874, or by the attempted treaties of 1885 and 1886, were left wide open, the question of Blackfoot and Gros Ventres rights in the country claimed as their territory under the treaty of the Judith, which they had attempted to cede under the unratified treaties were untouched, and the rights created by the United States by treaty in the Common Hunting Ground in all the tribes parties to the Judith treaty were not considered. All that was ceded by Act of May 1, 1888, was the reservation described by Act of 1874, retaining, however for the Indians what is now contained, roughly, within the present boundaries of the Reservations of Blackfoot, Fort Belknap, and Fort Peck.

On February 32, 1889 and enabling Act was approved whereby the Territories of Montana, Dakota and Washington were permitted statehood, on compliance with certain conditions set forth in the Act. On November 8, of the same year, a Presidential Proclamation announced the admission of Montana as a State. Had the State enabling Act been silent on the question of Indian title, it is thought...
claim made concerning that this fact alone might have settled the/hitherto unceded lands and hunting grounds given the Indians, parties to the treaty of the Judith. A State can hardly be deemed to be admitted on an equal footing with the original states of the Union when a substantial portion of its territory is claimed by Indians under a treaty. But the enabling Act was not silent on this point, and in this respect, according to Assistant Commissioner of Indian Affairs, Mr. Merrit, in his testimony before the Northern Pacific Land Grant Hearing, "A comparison of the statutes shows only the enabling Act of Montana carrying provisions relating specifically to the interests of Indians." The enabling Act declared as a condition, that the inhabitants of the proposed states should forever disclaim all right and title to all lands lying within their limits owned or held by any Indian tribe or tribes, the same, until title should be extinguished by Congress to remain subject to the disposition of the United States. This provision of the enabling act was engrafted into previous second of Ordinance One, of the Constitution of the State of Montana, and is now a part of the Constitution of that State.

In 1895 an agreement was made with the Gros Ventres and Assiniboinas at Fort Belknap, ceding 7½ mile strip of the southern part of that reservation, which was alleged to contain, and as it turned out did contain, gold. There is no claim ever made in this agreement, and a fair price was paid for the cession. At the same time a like agreement was made with the Blackfeet, whereby they ceded to the United States a strip which now forms the eastern half of the Glacier National Park. Under the terms of this cession the Indians were to be allowed to hunt, fish and cut wood in the ceded lands. In 1896 the same part of the public domain, the ceded strip was thereafter made a public park, and the right to hunt, fish and cut wood by the Blackfeet was denied. However, this is a minor point, and only involves the construction to be placed on the words public domain.

The claims of these Indians, more especially advanced by the Assiniboinas, have been agitation by the Blackfeet and Gros Ventres. It was not, however until 1905, or 1906 that they were able to obtain a lawyer who would make an investigation for them. The reason for this can readily understood. In the first place a claim of this sort are so vast, that when advanced, and especially advanced by indians, who can neither read, write, nor understand English, the average white man is very apt to suspect, and does suspect their validity. It is also difficult to impart to the United States the incredible degree of stupidity and bungling in its policies which the very existence of such claims would necessarily imply. The average white man, therefore, hearing the story of the average Indian, who, un instructed in the law, only knew that he was entitled to vast territories of which he had been unjustly, in his opinion, deprived, would take the narrative with a healthy skepticism, and look no further. Again, an Indian case is an actual liability to the average law office, besides requiring very special training to handle. Such litigation drags out for many years, and its outcome is always very uncertain, this uncertainty being due in many cases to the very magnitude of the claims involved, rather than to their validity.
or justice. The attorney taking an Indian case is compelled by law to take it on a contingent fee basis, and pay his own expenses, relying on the outcome of the case for his reimbursement and reward. This fact alone would discourage many attorneys from touching such a case. And after an attorney has taken such a case he finds very special difficulties. He must first of all, because of the provisions of the Act of 1863, get a special jurisdictional act by Congress permitting his client to sue the United States. When he approaches Congress on this matter he is more than apt to find himself regarded in the light of a paid lobbyist, or a man with a cooked up case, by the average legislator he meets. He will find extravagant, and unmerited ideas entertained as to the amount of compensation he may ultimately obtain for his services. He will find these ideas also obtaining among his clients, with the result that a certain number of them will be trying to hire some one else, in exchange for a cut in the proceeds, and will be vigilantly slandering him to the rest of the tribe to attain that end. This will bring him into contact with Reservation politics, compared to which the best politics of Tammany in the palmy days of Tweed are as nothing. Finally he is bound to know that whatever the result obtained, his client is sure to be dissatisfied both with his effort, and with the result. In the face of all these things, there are only three classes of men who will make and Indian Claim; Those who know what they are up against when they take it, but do so because they are fascinated by that class of work, in spite of its difficulties; those who know nothing about Indian cases, and rush in where angels fear to tread, and regret their folly later; and those who agitate claims which they never seriously intend to bring to an issue, and make a living by panhandling the Indians, while feeding them with false hopes. In the face of the above it may now perhaps be understood why it was not until 1906 that the Blackfeet and Gros Ventres found attorneys who were willing to investigate their claims.

The preliminary investigation, and other work on the claims growing out of the treaty of the Judith took about four years, and it was not until 1910 that a bill was introduced in the Senate to give the Court of Claims jurisdiction to hear the case of these Indians. This bill failed to pass. So did other bills of like import, presented to each succeeding Congress, from 1910, to the outbreak of the world war, when we became too engaged in looking after foreign treaty breakers, to look after our own. After the war we were the first to get a jurisdictional bill to permit presentation of the Judith treaty claims to the Courts was resumed, but it was not until 1934, on March 13, that the President signed a bill of such character, and the claimants under the treaty of the Judith found themselves entitled to a hearing in Court. Thereafter, on July 13, 1935, suit was filed on behalf of the Blackfeet, Gros Ventres and Nez Perces in the Court of Claims. The Flatheads did not join in this suit, and allowed the two year limitation period given under the jurisdictional act to lapse, as they had a jurisdictional bill under consideration which they understood was more broad, and which they wished to present, but at this stage preparations are actively going forward to present the case of the Bribes other than the Flathead to the court at the earliest possible date.
Briefly, the claims advanced by the Blackfeet, Gros Ventres and Nez Percés to the Court are these:

compensation for the loss of

The Blackfeet alone claim/timber and hunting rights in what is now the eastern half of Glacier National Park. They were promised these rights upon cession of that strip, as long as that strip should be a part of the public domain, and they were forbidden to hunt, fish or cut timber in the ceded strip after it became a part of Glacier Park.

The Blackfeet and Gros Ventres claim the value of a strip of country between the Teton and Marias Rivers, which was a part of the Blackfeet territory as described in the treaty of the Judith. This strip was not of the cessions attempted by these Indians in 1855 and 1866, and was not part of the reservation described in the Act of 1874, creating the northern reservation north of Birch Creek, the Marias and Missouri Rivers. It was opened for settlement as part of the tract described by Executive Order of 1874.

The Blackfeet and Gros Ventres claim that if the unratified treaties of 1868 should be regarded by the Courts as valid and binding on all parties, in spite of their provisions to the effect that they must be ratified, that they should be paid the amounts promised them by these treaties, which amounts have not been paid.

The Blackfeet and Gros Ventres claim that if the unratified treaties are not valid, then they should recover a fair value for that part of the Blackfeet territory which was set aside by the Judith treaty, and of which cession was attempted in the unratified treaties, which is the country lying north ofHelena, Montana, west to the Rocky Mountains, and east and south to the Musselshell River, and north as far as the Teton and Missouri Rivers. They also claim, if the unratified treaties be established, a reasonable royalty for gold and oil extracted from this tract of land, as they believe that the Judith treaty gave them subsisal rights in the Blackfeet territory.

The Blackfeet, Gros Ventres and Nez Percés claim compensation for the loss of the Hunting Ground, but the claim of the Blackfeet and Gros Ventres is more restricted by certain other considerations than is that of the Nez Percés.

In looking over the claims of these Indians, and the history of their origin, and the manner in which the United States undertook to adjust them, we are compelled in fairness both to the United States, the Indians, and the white settlers to come to certain conclusions.

The treaty of the Judith, at the time of its execution, seemed the best possible solution of a necessary problem, that of getting immigrants a clear and safe passage to the northwest coast. No one could then foresee the speedy settlement, at an early date, of what is now the State of Montana. When that settlement occurred, the settlers, not being learned in Indian Treaties, naturally left these matters up to their Government to handle in the best shape it could. The Government however had its hands full, first with averting a Civil War, second with fighting one, and finally with problems of reconstruction after a civil War, and could not
consequently keep pace with, or for that matter give much attention to affairs going on in a place so remote as Montana territory. Then the Sioux, beginning with the Minnesota Massacre of 1862, and continuing in a state of intermittent war until the campaign of 1876, gave the whole Indian problem a rather doubtful color with the Government. The Sioux were hostile, erge western Indians were all bloodthirsty, and occupied their leisure moments in killing white men. The psychology of this state of mind is believed to be sound. But when other, more pressing problems were set aside, and the question of the treaty of the Judith, and rights acquired by the Indians under such treaty could be considered, the invasion of these rights was found to be so vast, that on one hand, the rights could not be inoculated, but the claims growing out of these rights might become so intricate and costly, that they could not, in prudence, be settled. A middle course was taken, and the rights acquired by the treaty of the Judith, and the claims growing out of them were forgotten, at least by the Government, but not by the Indians themselves.
THE STORY OF THE BLACKFOOT CLAIM.

With the acquisition of California under the treaty concluded at Guadalupe Hidalgo, February 3, 1848, a keener interest was aroused in our Eastern States with respect to the settlement of the Pacific coast, the further exploitation of north Pacific fisheries, and the expansion of Far Eastern Trade. The opening of Japan to commerce, had, indeed, been considered in the House of Representatives at Washington, as early as 1845. The California gold rush of 1848-1849 greatly increased immigration both to California, and to the Northwest coast. Some of the immigrants came to the new country by way of Cape Horn, or across the Isthmus of Panama, but many had to choose the more tedious and dangerous way of the overland trail across the plains. The question of easy and safe routes from the Eastern States to the Pacific seaboard became of considerable importance.

In 1851, in order, among other things, to promote peace among the prairie tribes of the Northwest, and thereby obtain a safer passage of settlers through the lands claimed by these tribes, in the journey of these settlers to the California and Oregon country, a treaty was concluded at Fort Laramie with the principal tribes roaming the plains north of Texas and New Mexico. This treaty sought to insure peace among the Indians by limiting the various tribal boundaries, and exacted promises from the Indians to keep peace with each other, and with white men. In this treaty, although the Blackfeet Indians were not present, and consequently did not sign it, the Blackfeet territory was, with the consent of the other tribes signing the treaty, and of the United States, defined as taking in the valleys of the Three Forks of the Missouri River, and eastward to the upper reaches of the Yellowstone River, and the country lying between the Musselshell and Mussouri Rivers. The Senate ratified the treaty, with an amendment reducing the annuity period, and all the tribes who signed the treaty subsequently assented to this amendment, and accepted the benefits which the treaty conferred upon them.

The Laramie treaty was not in all respects a success. The Indians continued to wage war with each other, and occasionally harassed trains
of immigrants passing through their country. The immigrants continued
to pass through the Indian country in large numbers, on their way
to the country beyond the Rocky Mountains, some succumbing to
the attacks of Indians, but more perishing on the way from exhaustion,
disease, and the privations incident to the journey. The planning
of a railroad to take care of this westward flow of immigrants began
to attract the attention of the Government.

A survey for a contemplated railroad, to extend from the upper
Mississippi River to the Pacific coast was first undertaken under
Governor Isaac I. Stevens in 1853. This survey was made under the
authority and direction of Jefferson Davis, then Secretary of War.
Early in 1853 Governor Stevens encountered the Gros Ventres of the
Prairie, a branch of the Arapahoe who were the occasional allies of
the Blackfeet, and later a war party of Blackfeet themselves, on the
Missouri River, between Fort Union and Fort Benton. From contact with
these tribes it became apparent at once that the wars which they
constantly waged with the Flatheads, Nez Perces, and other tribes
west of the Rocky Mountains, would offer a serious obstacle in
constructing or maintaining a railroad through that part of the
country. The cause of the perpetual conflict between the Blackfeet
and Gros Ventres, with the Flatheads, Nez Perces, and other western
tribes, was really quite simple. Game was scarce, and there were no
buffalo, west of the Rocky Mountains, and this condition had prevailed
for a great many years. The Flatheads, Nez Perces, and other western
tribes were accustomed to form large parties and come east to the
prairies in search of buffalo meat and hides. Here they encountered
the Blackfoot and Gros Ventres, who regarded them as trespassers in
their country, and fell upon them. The result was a desultory, but
nevertheless continuous warfare waged between the Blackfoot and
Gros Ventres on the one hand, and the Flathead, Nez Perce, and other
western tribes on the other.

This long standing conflict had impressed itself even to the
extent of giving names to certain localities. Mullan Pass, which is
the point where a line of the Northern Pacific Railroad now crosses
the Continental Divide, on the line between Helena, and Missoula,
Montana, was called by the Blackfeet Easy Pass, a descriptive name, and by some Indians Medicine Rock Pass, from a legend and belief connected with a rock located in the pass. But the French, and French mixed breeds in that part of the country named the pass the Port d'Infer, or Hell Gate, because, they said, they would rather go through the gates of hell than through that pass. This was because the pass was a favorite lurking place for Blackfeet parties in search of the horses, scalps, and other booty from the western Indians in their passage to and from their hunting trips. The name of the town of Missoula, which is west of the main divide, and at the mouth of the canyon which goes up to Mullan Pass is derived from a Salish, or Flathead word. According to Father Palladino it means, in its original form, "at the stream or water of surprise, or ambush." The significance of this word is best understood by the fact that the Blackfeet, on account of attacking the Flatheads and western tribes when they found them east of the mountains, frequently extended their raids west of the mountains and fell upon these Indians in their own home territory.

The reports of the Stevens Railroad Survey would indicate that Mullan Pass was a very desirable point at which to put either a railroad, or a wagon road, across the Continental Divide. But before any sort of a road could be put through this part of the country it would be absolutely necessary that some arrangement be made between the Blackfeet, and their allies, and the Flatheads, and their allies, leading to a cessation of their perpetual conflicts over the eastern buffalo ranges.

The winter of 1854 was spent by Governor Stevens in Washington, where he was occupied in obtaining from Congress appropriations, and proper authority to negotiate treaties on behalf of the United States with the Blackfeet and Cree Ventres, and with the Flatheads, Nez Perces, and other tribes west of the Rocky Mountains. The necessary appropriations were obtained, and proper authority was granted Governor Stevens by the Secretary of the Interior and the Commissioner of Indian Affairs to treat with these Indians.

It is needless to follow the Stevens treaty commission in its
journey through the various tribes, eastward from Puget Sound. About the middle of October, 1855, Governor Stevens, with Commissioner Cummings, who had come up the Missouri River to meet him with the treaty goods, and other supplies, met the Blackfeet, Gros Ventres, Nez Perces and Flatheads at the mouth of the Judith River, in what was then the Territory of Nebraska, but is now the State of Montana. At this place, on October 17, 1855, the Commissioners concluded, on behalf of the United States a treaty with the tribes there assembled, which appeared adequate to settle the war being waged between the prairie and western, or mountain tribes, and sufficient to permit the construction of a railroad, or other roads, through that part of the country, should it be considered desirable to do so in the future.

The treaty provided that the Blackfeet, with their occasional allies, the Gros Ventres of the Prairie, who are considered for the purposes of the treaty a part of the Blackfeet Nation, consented and agreed that such of the lands described in the Laramie treaty as Blackfoot territory as were embraced in the valleys of the Three Forks of the Missouri River, and east to the upper waters of the Yellowstone River, should be a Common Hunting Ground for all of the tribes of Indians parties to the treaty for a period of ninety-nine years. This provision created a preserve in a very rich game country, covering about thirty thousand square miles, to the south of where Helena, Montana, now stands. Within this preserve the Blackfeet, Gros Ventres, Flatheads and Nez Perces would hunt in common, and neither tribe could claim exclusive rights or maintain permanent habitations within this preserve. Thus the Indians west of the mountains would have a place to get their buffalo meat and hides. The Indians west of the mountains agreed to use no pass north of Nullan, or Hell Gate Pass, in coming in or out of the hunting ground, and a ten mile zone was established north of Nullan, or Hell Gate Pass, in which the parties to the treaty could hunt, but to which none of the parties to the treaty could claim exclusive rights.
In order to avoid further conflicts with the western tribes and the Blackfeet, by reason of the alleged trespassing of the western tribes in country claimed by the Blackfeet, territory was set aside for the latter tribe, and the Gros Ventres, over which they should have exclusive ownership and control. The parties to the treaty agreed that the country north of the Common Hunting Ground, as far as the Canadian Boundary, and east and south as the Musselshell River, and north of the Missouri River to its junction with Milk River should be the territory of the Blackfoot Nation.

Reservations were made in the treaty in favor of the United States and its citizens, and guarantees were made by the United States to protect the Indians in the enjoyment of their treaty rights. The United States was to be permitted to establish post roads, telegraph lines, forts, agencies, missions and schools through out the Blackfoot Territory and the hunting ground, and could use timber, stone and other materials found there which were necessary for these structures. The Indians engaged to allow citizens of the United States to reside in and pass unmolested through their territories, and to have free navigation of the rivers and streams in that country. The Indians agreed to keep peace with each other and with the United States and its citizens, and the United States agreed to protect the Indians, parties to the treaty, against depredations by white men, and invasion of their treaty rights, and especially against the whiskey traders. The Blackfoot and Gros Ventres were provided with certain annuities in consideration of such rights as they had relinquished by the treaty. These annuities were subsequently appropriated by Congress, and were presumably paid in full to these Indians.

It must be borne in mind that the Blackfoot territory, and the hunting ground set aside by this treaty was not at this time desired by white men. A safe passage for white men through this country, to the Pacific Coast was desired. No further explanation is needed to account for the liberality of the terms of the treaty.

This treaty of the Judith was concurred in, without amendment, by --
the Senate, and was proclaimed by Franklin Pierce, President of the United States, in 1858.

The report of Superintendent Cumming to the Indian Department in 1858 would indicate that the treaty of the Judith was, unlike many other treaties, working out in the most desirable manner. The tribes, parties to the treaty, were at peace with each other for the first time in many years. Intertribal commerce had taken the place of the wars hitherto waged between them. The country was really a safe one for white men to travel through. But in 1858 the Reports of the Commissioner of Indian Affairs contain complaints of white invasion into the country set aside by the treaty of the Judith. To explain the causes of this invasion we must turn to Fort Bridger.

Fort Bridger was founded in 1843 by James Bridger, trapper and guide. It was located on Black's Fork of Green River, which is west of South Pass, the point at which the Immigrant Road crossed the Continental Divide. The Fort was established for the purpose of resupplementing immigrant trains after their difficult journey across the plains, and before they continued on their more difficult journey through the defiles of the mountains. Feet sore and starved cattle and horses could always be cheaply bought, and good horses and cattle found a ready market at Fort Bridger. While there was some pasturage around Fort Bridger, it does not appear to have been adequate for horses and cattle in large numbers. The most desirable location for pasturage appears to have been found in the valleys of the Three Forks of the Missouri River, about three hundred and fifty miles to the north.

As early as 1850, according to Granville Stuart, Captain Grant and his men were buying worn-out stock from immigrants along the Immigrant Road between Salt Lake and Fort Bridger. This stock was driven up into the valleys of the Three Forks and there fattened, when they were again taken to Fort Bridger and sold to immigrant trains at a profit. This business developed gradually, but by 1858 it would appear that ranching in the valleys of the Three Forks of the Missouri, which was the Common Hunting Ground set aside by the
treaty of the Judith, was being conducted on a fairly large scale. When James and Granville Stuart first went into this country in 1858 they did not see very many buffalo there, or at least made no report of that fact, although they mention of the presence of other game. It was around 1858 that some of the old Indians assert that the buffalo were scared out of the Hunting Ground by white men.

Meanwhile questions relating to abolition, secession and the very existence of the Union were agitating the Government at Washington, which was far too engaged in these matters to pay much attention to events transpiring upon the Upper Missouri River.

The ranching business continued to flourish in the Common Hunting Ground of the Indians, until a second invasion of white men took place, due to the discovery of gold. Minor discoveries of the precious metal had been made on Gold Creek, and near Fort Owen as early as 1853. But these localities were west of the Contintental Divide, and the discoveries resulted in no great gold rush. They served however to stimulate prospecting both west of the Divide, and east of the Divide in the Valleys of the Three Forks, and this prospecting resulted, in 1862, in the discovery of rich pay dirt on Grasshopper Creek, in the Common Hunting Ground of the Indians. In a very short time the mining camp of Bannack was established at this place, and a regular gold stampede was in full swing. In 1863 prospectors from Bannack discovered gold in Alder Oulch, also in the Hunting Ground, and the towns of Virginia City, Summit and Nevada arose almost over night, and by the year following the population of Alder Oulch alone is estimated at fourteen thousand. But events which are material to this narrative were taking place in Washington.

On March 3, 1863 the President approved an enactment of Congress which provided that the jurisdiction of the United States Court of Claims "shall not extend to any claim against the Government not pending therein on December first, eighteen hundred and sixty-two, growing out of or dependent on any treaty stipulation entered into with foreign nations or with Indian tribes." This act has never been repealed, and its effect was to deprive Indian tribes of any redress
against the Government on account of alleged treaty violations, as
the Court of Claims was the only Court which could handle such cases.
In the light of after events this Act makes interesting reading.

By Act of Congress, approved May 26, 1864, the Territory of
Montana was created. This Act carries in the Second Proviso of
Section 1 a clause relating to the treaty rights of the tribes of
Indians inhabiting the new Territory. This clause fully confirms the
treaty rights of the tribes, and declares that lands or other rights
given the Indians by treaty, and not extinguished by the United States
with the consent of the tribes, shall form no part of the new
Territory. If this proviso were taken seriously, and it was not;
the new Territory of Montana had control of a relatively small amount
of the acreage within its boundaries. The land and hunting grounds
set aside for the Indians under the treaty of the Judith alone took
up as much as fifty three per cent of the new Territory, and the
treaty of the Judith had never been repealed or modified. Add to this
the treaty lands of the Crow, Assiniboines and Flatheads and it
becomes evident that the new Territory had control, according to law,
over less than twenty five per cent of its actual area. Bannack, and
later Virginia City, at different periods the Territorial Capitals;
were located well within the limits of the Common Hunting Ground
established by the treaty of the Judith.

The settlement by white men, in large numbers, in the Hunting
Ground and the lands claimed by the Indians under the treaty of the
Judith, naturally led to conflicts between the settlers and the
Indians who claimed the country. Each regard the other as interlopers.
But there was never, at any time a state of war existing between any
of the tribes, who were parties to the treaty of the Judith, and
the United States and its citizens. Bands, and groups of individuals
in some of these tribes, were, from time to time, in conflict with
the United States, and with white men. Joseph's Band, consisting of
a relatively small number of Nez Perces, were successful in defeating
United States troops in 1877. Small bands of Blackfeet, from time to
time, indulged in raids, plundering and murdering white men.
Many of these bands of Blackfeet resided in Canada, only coming into this country when engaged in hostile acts, and some of these bands, although residing in this country, departed permanently after committing murders, and their descendants still reside in Canada. While prior to 1864 the settlers on the land and in the hunting ground set apart by the Judith treaty had suffered to some extent from depredations by parties of Indians, it was not until the summer of 1864 that the situation really became acute.

The causes for the conflicts by small bands of the Blackfeet and other Indians and the whites were many and varied. During the Civil War, and especially around the time of the Mason-iddell affair, when a war with Great Britain seemed imminent, many hot-headed individuals in Canada considered it their patriotic duty to incite Indians south of the border against the United States, and to furnish them with arms and ammunition. Complaints made from the Blackfoot Superintendency at that time indicate this, but neither the Canadian Government nor the Hudson's Bay Company had any hand in the matter, as some alleged. Then there was the perennial source of mischief among the Indians, the whiskey trader, who, operating through the Indian country, in violation of the provisions of the treaty of the Judith and of the Indian Intercourse Act, left murders, disorders and poverty behind him wherever he went. There was the Road Agent, or Highwayman, who, according to Langford, the former Secretary of the Virginia City Vigilantes, often hid the traces of their murders and robberies by leaving Indian signs at the scene of the crime. Thus the whites would visit reprisals upon Indians, innocent of those particular acts, and the Indian would visit further reprisals upon whites, who were in all probability innocent parties to the entire transaction. We have the Indian proclivity for horse stealing, not from whites alone, but from other tribes as well, and this gave rise to irritation among the settlers, and this irritation resulted in pursuit of the thieves and conflicts. There was finally the plain evidence, plain at least to the Indians, that the country set aside as Blackfeet territory by the treaty of the Judith, and the country set aside as a hunting ground for a period of ninety-nine years by the same treaty, was being invaded by white men in violation of the express terms of the treaty, and that any troops sent out by the United States were being sent, not to protect the Indians.
against such invasion, as the United States had guaranteed to protect
them, but to protect the invaders. But the whites made the same com-
plaint in regard to the troops that the Indians did. To the white set-
tler it appeared that the troops when sent, were there more to protect
the Indian. In the face of all of these causes for hostility, the wonder
is not at the extent of the conflict between small bands of Blackfeet and
whites, but that the Blackfeet and Gros Ventres, as a nation, did not wage
war on the whites. But they never did.

With the growing irritation between Blackfeet and Gros Ventres and
white settlers, it seemed best to settle the situation by making another
treaty, which would quiet the Blackfoot claims south of the Teton and
Missouri rivers, both as to their territory and hunting ground, and re-
strict these Indians to the country between the Teton and Missouri rivers
and the Canadian line, which nobody else seemed to want at that time.
Accordingly, Gen. E. Upson, Special Commissioner, and Thomas Francis
Meagher, Acting Governor of Montana Territory, met the Blackfeet and Gros
Ventres at Fort Benton, Montana, and there concluded a treaty with these
Indians on November 16th, 1865. By the terms of the treaty, the Black-
feet and Gros Ventres attempted to cede to the United States not only all
that part of the Blackfoot territory, as set aside by the treaty of the
Judith, located south of the Teton and Missouri rivers, but attempted to
cede the Hunting Ground, in which the Flatheads and Nez Perces had a joint
interest with themselves. No attempt was made at that time, nor since, to
consult with the Flatheads and Nez Perces in regard to their wishes in the
matter. The treaty declared that it should be obligatory on the Indians
from the date of signature, and on the United States from date of ratifi-
cation. In other words, the Indians, if this is correct, were to cede
their lands, but the United States was only obliged to pay for them if
the Senate ratified the treaty. Shortly after the treaty, bands of
Piegans committed depredations against the whites, as well as against the
Gros Ventres and River Crows, and in view of this situation the Commiss-
ioner of Indian Affairs recommended to the Secretary of the Interior that
a new treaty be made with the Gros Ventres, but that the treaty made on
November 16, 1865, be not ratified. No record appears that this treaty
was ever submitted to the Senate for action, and, of course, no payments
were ever made on account of the treaty.

By 1867, no further action having been taken in regard to the Indian claims under the Judith treaty, the situation, according to white inhabitants of Montana territory, became more serious. It was reported that the Blackfeet were planning a war, and the Gros Ventres were allied with the Cheyenne and Arapaho, and also planning a war. The militia were called out, intense excitement prevailed, but history fails to disclose that these wars ever materialized. The condition of affairs at this point demanded some final and amicable settlement with the Blackfeet and Gros Ventres, as to their lands and hunting rights in Montana. So another treaty commission was appointed and set out to attend to this matter.

On July 13, 1868, and later, on September 1, 1868, W. J. Cullen treated with the Gros Ventres and Blackfeet. On the former date, a treaty was concluded with the Gros Ventres at Fort Hawley, and on the latter date a treaty was concluded with the Blackfeet at Fort Benton, both places being in the then Montana Territory. Both treaties were different in regard to the amounts to be paid in consideration of the cessions to be made, but were otherwise identical, both in terms and wording. These treaties provided the identical cessions of the treaty of 1865, but increased the amount of compensation for those cessions. The Gros Ventres and Blackfeet attempted to cede that part of the territory given them in the treaty of Judith lying south of the Teton and Missouri rivers, restricting themselves to the country north of these rivers and to the Canadian line. They also attempted to cede the Common Hunting Ground to the United States, neither the United States or the Indians, parties to the treaty, seeming to regard the rights held jointly in the Hunting Ground by the Flatheads and Nez Percés. These treaties of 1868 further provided that in order to launch the Blackfeet and Gros Ventres upon a civilized career, free from debt, that the United States would agree to pay claims against the Indians on account of depredations committed by members of their tribes, and debts contracted by members of the tribes for goods, provisions or supplies furnished them by individuals, in a sum not to exceed Seventy-five thousand dollars for the Blackfeet and Twenty-five thousand dollars for the Gros Ventres. The

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treaties finally provided that they should not be binding on either party to them until ratified by the President and Senate, and that no payments should be made under the treaties until so ratified.

The provision for the payment by the United States of the debts of the Gros Ventres and Blackfeet to traders and other claimants is interesting. It must be remembered that the trader had a certain amount of influence with the Indian. The trader had had considerable contact with the Indian, had intermarried, in many cases, with them, and had Indian relations, and had the power to obtain good will by extending credit, or to demand respect by withholding credit from the Indian. If influence were required in order to get a treaty assented to by the Indians treated with, a clause inserted in the treaty whereby the trader could benefit to the extent of having a slice of the public funds would naturally be a great help, and would stimulate the trader in efforts to get the Indians to sign the treaty. This phase of the treaties just referred to has been considered, because of the effect they had in the action taken on the treaties at Washington.

The treaties of 1868 were duly forwarded to Washington, and on February 11, 1869, were transmitted by Andrew Johnson, President of the United States, to the Senate. The treaties carried with them the recommendations of the Secretary of the Interior and the Commissioner of Indian Affairs that they be amended by striking out the provisions for payment of debts arising out of depredation claims, and debts to traders. On February 11 these treaties were read for the first time in the Senate, and referred to the Committee on Indian Affairs. Before the Committee had completed its deliberations on the treaties, Congress adjourned sine die, the same day, March 4, 1869, and on March 4, 1869, Ulysses S. Grant became President of the United States. The Congress which adjourned under Johnson saw the last of Indian treaties. The Senate, in that Congress, on February 16, 1869, ratified the Laramie treaty of April 29, 1868, with the Sioux; the Fort Bridger treaty of July 3, 1868, with the Shoshoni; and the treaty of Washington, D.C., of August 15, 1868, with the Nez Percés. All of these treaties were proclaimed by President Johnson, February 24, 1869. These three were the last of the Indian treaties. After the advent of
President Grant, and so down to the present, the Indian tribes were
dealt with by Act of Congress or by Executive Order. Indeed, by Act
of March 2, 1871, it was enacted that no further treaties should be
made with the Indian tribes.

After Congress had determined that no further treaties were to be
made with the Indian tribes, the tribes who were parties to the treaty
of the Judith were placed in a rather remarkable position. The United
States had failed to protect them from invasion, as agreed under the
treaty of the Judith, and their lands and hunting rights had been in-
vaded by white men. They had no redress in the Courts, for that channel
had been closed by Congress in 1863. Three treaties had been negoti-
ated with the Blackfeet and Gros Ventres, ignoring the rights of the
other Indians, parties to the treaty of the Judith, and each of these
three treaties had been ignored by the United States, who had failed to
make them effective. Then, an enactment was made by Congress prohibit-
ing further treaties with Indians. Congress might, if it wished to do
so, make agreements with the tribes, and enact these agreements into
law, or it might make enactments without consulting the tribes at all,
and the enactments so made would have the same force and effect as if the
consent of the tribes had been obtained. At all events the rights of
the Indians under the treaty of the Judith were still unsettled, and the
Indians were in a very poor position to have them settled, at this junct-
ure, with any advantage to themselves.

The next Act of Congress affecting the Blackfeet and Gros Ventres
was approved April 15, 1874. This Act set apart all of that tract of
country in northern Montana which lay east of the Rocky Mountains, and
north of Bighorn Creek, the Marias and Missouri Rivers. The eastern bound-
ary of this tract was the Montana-Dakota line. This Act is mentioned as
it has bearing on an agreement with these Indians which will be later re-
ferred to. The Act also empowered the President to place other tribes
in the tract set aside, but makes no mention of taking, or quieting title
to the lands claimed south of the Teton and Missouri Rivers under the
treaty of the Judith.

The Act was followed by an Executive Order, under date of August 19,
1874, whereby that part of the Blackfeet territory, set aside by the treaty of the Judith, which was embraced between the Teton and Sun Rivers, was thrown open for settlement, and this evidently on the theory that it was a part of the public domain, and could be so disposed of by the President.

A series of Executive Orders followed which alternately contracted and expanded the Blackfeet Reserve as described by the Act of 1874, but as none of these are material to the matter in hand, they will not be taken up. All were evidently based on the assumption that the treaty of the Judith was a dead letter, but on what theory, if any, that assumption was based, is not apparent from the records at hand.

By 1887 it was considered desirable to make another agreement with the Blackfeet, and Gros Ventres, and with the Sioux and Assiniboines, who were now permanent fixtures in this northern reservation. Game was scarce, and the Indians were in great need of food, and the whites were desirous of more land. Now was a capital chance to settle the question of title under the Judith treaty to the south of the Missouri and Teton Rivers, at least in so far as it concerned the Blackfeet and Gros Ventres. It would also have been an excellent time to clear up the relinquishment of the Common Hunting Ground, as it affected all of the tribes parties to the Judith treaty. But the opportunity was passed by. In the 1887 agreement, enacted by Congress on May 1, 1888, the cessions made by the Indians, including the Blackfeet and Gros Ventres, were restricted to relinquishing the reserve described in the Act of 1874, that is to say, to the lands north of the Birch Creek, the Teton and Missouri Rivers. Questions relating to rights in the strip between the Teton and Marias, which was untouched either by the Act of 1874, or by the attempted treaties of 1865 and 1869, were left wide open, the question of Blackfeet and Gros Ventre rights in the country claimed as their territory under the treaty of the Judith, which they had attempted to cede under the unratified treaties, were untouched, and the rights created by the United States by treaty in the Common Hunting Ground in all the tribes parties to the Judith treaty were not considered. All that was ceded by Act of May 1, 1888, was the reservation described by Act of 1874, retaining, however, for the Indians what is now contained, roughly, within the present boundaries of the Reservations of the Blackfeet, Fort Belknap and Fort Peck.
On February 22, 1889, an enabling Act was approved whereby the Territories of Montana, Dakota and Washington were permitted statehood, on compliance with certain conditions set forth in the Act. On November 8, of the same year, a Presidential Proclamation announced the admission of Montana as a State. Had the State enabling Act been silent on the question of Indian title, that fact alone might have settled the claim made concerning hitherto unceded lands and hunting grounds given the Indians, parties to the treaty of the Judith, for a State can hardly be deemed to be admitted on an equal footing with the original states of the Union whena substantial portion of its territory is claimed by Indians under a treaty. But the enabling Act was not silent on this point. In this respect, according to Assistant Commissioner of Indian Affairs, Mr. Merritt, in his testimony at the Northern Pacific Land Grant Hearing, "A comparison of the statutes shows only the enabling Act of Montana carrying provisions relating specifically to the interests of Indians." The enabling Act declared, as a condition, that the inhabitants of the proposed states should forever disclaim all right and title to all lands lying within their limits owned or held by any Indian tribe or tribes, the same, until title should be extinguished by Congress, to remain subject to the disposition of the United States. This provision of the enabling Act was engrafted into proviso second of Ordinance One, of the Constitution of the State of Montana, and is now a part of the Constitution of that State.

In 1895 an agreement was made with the Gros Ventres and Aisiniboles at Fort Belknap, ceding strip of the southern part of that reservation which was alleged to contain, and as it turned out did contain, gold. There is no claim over this agreement, and a fair price was paid for the cession. At the same time, a like agreement was made with the Blackfeet, whereby they ceded to the United States a strip which now forms the eastern half of the Glacier National Park. Under the terms of this cession the Indians were to be allowed to hunt, fish and cut wood in the ceded land, so long as it was a part of the public domain, subject, however, to State game laws. The ceded strip was thereafter made a public park, and the right to hunt, fish and cut wood by the Blackfeet was denied. However, this is a minor point, and only involves the construction to be placed on
the words "public domain."

The claims of these Indians have been agitated by them for many years, more particularly by the Blackfeet and Gros Ventres. It was not, however, until 1905 or 1906 that they were able to obtain a lawyer who would make an investigation for them. The reason for this can be readily understood. In the first place, claims of this sort are so vast, that when advanced, and especially advanced by old Indians who can neither read, write no understand English, the average white man is very apt to suspect and does suspect their validity. The average white man, hearing the story of the Indian who, uninstructed in law, only knew that he was entitled to vast territories of which he had been unjustly, in his opinion, deprived, would take the narrative with a healthy skepticism and look no further. Again, an Indian case is a financial liability to the average law office, besides requiring very special training to handle. Such litigation drags out for many years and its outcome is always uncertain, this uncertainty being due in many cases to the very magnitude of the claims involved, rather than to their validity or justice. The attorney taking an Indian case is compelled by law to take it on a contingent basis, and pay his own expenses, relying on the outcome of the case for his reimbursement and reward. This fact alone would discourage many attorneys from touching such a case. And after an attorney has taken an Indian claim he finds very special difficulties. He must first of all, because of the provisions of the Act of 1868, get a special jurisdictional Act by Congress permitting his client to sue the United States. When he approaches Congress on this matter he is more than apt to find himself regarded in the light of a paid lobbyist, or a man with a cooked-up case, by the average legislator he meets. He will find extravagant and unmerited ideas entertained as to the amount of compensation he may ultimately obtain for his services. He will find those ideas also obtaining among his clients, with the result that a certain number of them will be trying to hire some one else, in exchange for a cut in the proceeds, and will be vigorously slandered to the rest of the tribe to attain that end. This will bring him into contact with Reservation politics, compared to which the best politics of Tammany in the palmy days of Tweed are as nothing. Finally he is bound to know that whatever the result obtained, his client is sure to be dis-

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appointed, both with his effort and with the result. In the face of all these things, there are only three classes of men who will take an Indian claim: Those who know what they are up against when they take it, but do sympathetically so because they are fascinated by that class of work, in spite of its difficulties; those who know nothing about Indian cases, and rush in where angels fear to tread, and regret their folly later; and those who agitate claims which they never seriously intend to bring to an issue, and make a living by panhandling the Indians, while feeding them with false hopes. Considering the above, it may now perhaps be understood why it was not until 1906 that the Blackfeet and Gros Ventres found attorneys who were willing to investigate their claims.

The preliminary investigation, and other work on the claims growing out of the treaty of the Judith, took about four years and it was not until 1911 that a bill was introduced in the Senate to give the Court of Claims jurisdiction to hear the case of these Indians. This bill failed to pass. So did other bills of like import, presented to each succeeding Congress from 1911 to the outbreak of the World War. After the War the fight to get a jurisdictional bill to permit presentation of the Judith treaty claims to the Courts was resumed, but it was not until 1924, on March 13, that the President signed a bill of such character, and the claimants under the treaty of the Judith found themselves entitled to a hearing in Court. Thereafter, on July 1, 1925, suit was filed on behalf of the Blackfeet, Gros Ventres and Nez Perces in the Court of Claims. The Flatheads did not join in this suit, and allowed the two year limitation period given under the jurisdictional Act to lapse, as they had a jurisdictional bill under consideration which they understood was more broad and inclusive of the claims they wished to present. At present, preparations are actively going forward to present the case of the tribes, other than the Flatheads, to the Court at the earliest possible date.

Briefly, the claims advanced by the Blackfeet, Gros Ventres and Nez Perces to the Court are these:

The Blackfeet alone claim compensation for the loss of timber and hunting rights in what is now the eastern half of Glacier National Park.