

IN THE
COURT OF CLAIMS OF THE UNITED STATES

No. E-427

THE BLACKFEET, BLOOD, PIEGAN, AND GROS VENTRE NATIONS OR
TRIBES OF INDIANS, RESIDING UPON THE BLACKFEET AND FORT
BELKNAP RESERVATIONS IN THE STATE OF MONTANA; AND THE NEZ
PERCE NATION OR TRIBE OF INDIANS, RESIDING UPON THE LAPWAI
INDIAN RESERVATION, IN THE STATE OF IDAHO, AND UPON THE
COLVILLE INDIAN RESERVATION, IN THE STATE OF WASHINGTON,

vs.

THE UNITED STATES.

PLAINTIFF/S' MOTION FOR NEW TRIAL AND BRIEF IN SUPPORT THEREOF.

MOTION FOR NEW TRIAL

Come now the above named plaintiffs and move this Honorable Court for a new trial in this case and that it reconsider and redetermine its judgment rendered herein on April 10, 1933, and for grounds of this motion allege that this Honorable Court erred in its special findings of facts, in facts omitted to be found which plaintiffs respectfully requested the Court to find, and as a result thereof erred in its conclusions of law based thereon, all in the following particulars:

Errors of Fact

A.

In its Special Findings of Facts XI, XII, XIII, XIV and XV this Honorable Court erroneously found that the defendant had paid the plaintiffs, the Blackfeet, Blood and Piegan tribes and the Gros Ventre tribe for one tract of 1,337,000 acres of land and another of 4,560,000 acres.

or a total of 5,897,000 acres, by the agreement and payments made there-
under ratified by the Act of May 1, 1888 (25 Stat. 113), and thus errone-
ously reduced the amount of land taken from these plaintiffs, consisting
of 15,289,344 acres (Fdg. XIV), for which they have received no compen-
sation, to 9,392,344 acres.

B.

Plaintiffs respectfully request the Court to find:

I.

Said tract of 1,337,000 acres was not included in the agreement and
cession ratified by the Act of May 1, 1888 (25 Stat. 113). This tract
lies entirely south of the Missouri River, while the lands ceded by the
agreement ratified by said Act of May 1, 1888, lie north of the Missouri
River and were those of the reservation as defined by the Act of April
15, 1874. Said Act of May 1, 1888, provides (25 Stat. 113, R.p. 491, 492):

"Whereas the reservation set apart by act of Congress ap-
proved April fifteenth, eighteen hundred and seventy-four, for
the use and occupancy of the Gros Ventre, Piegan, Blood, Black-
foot, River Crow, and such other Indians as the President might,
from time to time, see fit to locate thereon, is wholly out of
proportion to the number of Indians occupying the same, and
greatly in excess of their present or prospective wants; and
whereas the said Indians are desirous of disposing of so much
thereof as they do not require, in order to obtain the means to
enable them to become self-supporting, as a pastoral and agri-
cultural people, and to educate their children in the paths of
civilization; therefore, to carry out such purpose, it is hereby
agreed as follows:

* * * * *

"The said Indians hereby cede and relinquish to the United
States all their right, title, and interest in and to all the
lands embraced within the aforesaid Gros Ventre, Piegan, Blood,
Blackfeet, and River Crow Reservation, not herein specifically
set apart and reserved as separate reservations for them, and
do severally agree to accept and occupy the separate reservations
to which they are herein assigned as their permanent homes, and
they do hereby severally relinquish to the other tribes or bands
respectively occupying the other separate reservations, all their
right, title and interest in and to the same, reserving to them-
selves only the reservation herein set apart for their separate
use and occupation."

The Act of April 15, 1874, does not include any part of said tract of 1,337,000 acres. (Compare description of land in the Act of April 15, 1874, 18 Stat. 28, R. p. 488, with lands described by Executive Orders of April 13, 1875, 1 Kapp., 2nd Ed., 856, and July 13, 1880, 1. Kapp., 2nd Ed. 856, 857, R.p.490, and map attached to Report of Comptroller General filed in this case.)

The Report of the Commissioner of Indian Affairs, 1887, and the Report of the Committee on Indian Affairs of the House of Representatives, upon the agreements of December 1886 and January 1887, later ratified by said Act of May 1, 1888 (cited by defendant in its requested Findings XVII, R.p.267), contain the following language:

"On the 15th day of April, A. D. 1874, Congress passed an Act providing for hunting grounds for the several tribes of Indians mentioned in this bill, and the immense territory occupied in common by them was set apart for that purpose. At that time this region was noted for buffalo and other game, which have now become practically extinct, and no longer furnish a subsistence for these tribes. For a long time it has been evident that it was the duty of the Government to permanently settle such of these tribes as still roam over this tract, and to assist them to become self-supporting by other means than the chase.

"Without a treaty obligation these tribes, consisting of 2,026 at the Blackfeet Agency, 1650 at the Fort Belknap Agency, and 2,914 at the Fort Peck Agency, have continuously since 1874, and long prior thereto, been provided for and maintained by the Government, and will continue indefinitely to be a charge upon the Government unless some provision is made for their future support."

* * * * *

"Briefly stated, the agreement concluded with the various bands or tribes occupying the Great Blackfeet Reservation, in northern Montana, provides for the cession to the United States of by far the greater part of that vast reservation lying along the international boundary and extending east to the Dakota line and west to the summit of the Rocky Mountains, with the Missouri and Marias Rivers and Birch Creek for its southern boundary, estimated to contain 33,830 square miles, or 21,651,000 acres--an area three times as large as that of Maryland, larger than the State of Indiana, almost as great as that of South Carolina, and greater than the New England States, leaving out the State of Maine.

"According to the report of the Commission, the territory ceded to the United States under the agreement embraces an area

of about 17,500,000 acres--more than three-fifths of the entire reservation.

"The remaining unceded lands are divided into three separate reservations--one for the Indians now attached to the Fort Peck Agency, one for the Indians attached to the Fort Belknap Agency, and the third for the Indians attached to the Blackfeet Agency. * * * * *

"The tribes or bands for whom the several separate reservations are made retain no interest whatsoever in any reservation other than the one set apart for their separate use and occupation respectively."

Said tract of 1,337,000 acres was not left as any part of the lands reserved to the plaintiffs, the Blackfeet, Blood and Piegan Indians of the Blackfeet Reservation or the Gros Ventre Indians of the Fort Belknap Reservation, by said Act of May 1, 1888 (see location of Reservations defined by Act of May 1, 1888, and map attached to Comp. Gen. Report), and the defendant has not shown in support of its set-off for this tract that these plaintiffs were ever compensated for said land subsequent to May 1, 1888, or that they at any time, either prior or subsequent to May 1, 1888, ever claimed any interest in said land. It was no part of the lands reserved to these plaintiffs by the Treaty of October 17, 1855 (R.p.238) and said treaty contained no provision authorizing the defendant to place foreign Indians upon their said lands as defined by said treaty. Evidently the Executive Orders dated April 13, 1875, and July 13, 1880, by which this net addition of 1,337,000 acres was added to the reservation of these plaintiffs were considered by the Government as vacated by 1888, as said land had by that time been abandoned by the Assiniboine Indians as hereinafter shown.

II.

Said tract of 1,337,000 acres was the northern part of the tract reserved to the Assiniboine Indians by the Treaty of Fort Laramie.

(Compare Art. 5, Treaty of Fort Laramie, II Kapp. 594, with description of this tract shown by map attached to Comp. Gen. Rep. in this case.) The Assiniboine Indians had been driven off most of their lands by the Sioux (see decision of this Court in the Assiniboine case, No. J-31, Page 18), had gone north of the Missouri River, established themselves there without any formal order and continued to dwell there (see No. J-31, supra, Page 20). Thereupon the reservation of the Blackfeet and Gros Ventre Indians was enlarged by the Act of April 15, 1874 (18 Stat. 28; Edg. XIV) to include the territory so occupied by the Assiniboine Indians north of the Missouri River and east of the territory of these plaintiffs as fixed by said Treaty of October 17, 1855, by 4,560,000 acres. In 1874 an Agency was established at Fort Peck for these Assiniboine Indians. (Rep. Compt. Gen. p.267). This was upon said tract of 4,560,000 acres. (Compare description in Act of April 15, 1874, R.p.488, with Treaty of October 17, 1855, R.p.238, and map attached to Comp.Gen. Rep.) Under said agreement, ratified by the Act of May 1, 1888, 1,776,000 acres of this tract was reserved to these Indians of the Fort Peck Reservation and was not included in that cession. (R.p.493; see area of Fort Peck Res., 1 Kapp. 1033). The remainder of said tract, being 2,784,000 acres, was included in said cession, said Indians of the Fort Peck Reservation being paid thereunder the sum of \$1,650,000 for all claims they had to the lands ceded by said agreement.

III.

At the average rate of 24-1/2 cents per acre for all lands included in the cession of 1888 the Indians of the Fort Peck Reservation were paid for an amount of land in excess of said 2,784,000 acres, and also in excess of said total area of 5,897,000 acres, consisting of their said Fort Laramie Treaty lands of 1,337,000 acres, the lands reserved

to them on the Fort Peck Reservation of 1,776,000 acres, which were not ceded, and the remainder of the lands to which they had moved and on which they had settled of 2,784,000 acres which were ceded.

This Honorable Court held in the case of the Assiniboine Indians, No. J-31, (p.21) that said Indians were chargeable as a set-off with the money received for said lands under the Act of 1888, and the defendant is not entitled to again off-set said lands against the plaintiffs in this case.

BY

In its special Finding of Fact VII, this Honorable Court erroneously charged the plaintiffs, the Blackfeet, Blood and Piegan Indians and the Gros Ventre Indians with \$58,535.29 as in excess of the amount the defendant was obligated to expend under Articles 9 and 10 of the Treaty of October 17, 1855. Under said Articles of the Treaty (R.p. 243) the defendant agreed to expend \$350,000.00 for said Indians, but it was further provided that if in the judgment of the President and Senate the amount named in Article 9 be deemed insufficient for the purposes therein named it may be increased not to exceed the sum of \$35,000.00 per year. The expenditure of said additional amount of \$58,535.29 was made out of Congressional appropriations passed by the Senate and approved by the President in fulfillment of the provisions of said Treaty (R.p.249). It became and was a part of the consideration named in said Article 9 and does not constitute gratuities for which the defendant is entitled to credit as an off-set.

C.

This Honorable Court erred in holding that none of the plaintiffs were entitled to recover on account of their claims in the Common Hunting Ground because there was no provision in the Treaty of October 17,

1855, by which the Government obligated itself to preserve the game therein, and that the reasonable value to the plaintiffs of said hunting grounds, in the way of game, had not been proven or that such proof was of such character as to preclude the Court from awarding a money judgment.

This Honorable Court also erred in holding--

"The hunting ground was not Indian territory in a legal sense; no one tribe possessed any exclusive right of occupancy. The limited privilege and license to exploit the territory for game and wild animals, while limited as to parties, was not, we think, intended to fix other obligations than the one to delimit an area of lands, vast in extent, over which the Indians mentioned might hunt without interference from other and hostile tribes."

Said territory was recognized by the United States and the Indian tribes as the territory of the Blackfoot Nation by the Treaty of Fort Laramie (11 Stat. 749; R.pp. 494,495) as freely as was the territories therein recognized of the other Indian tribes who were parties to said Treaty. It was again treated as territory of the Blackfoot Nation in the Treaty of October 17, 1855 (R.pp.238,246). By Article 3 of the last named Treaty (R.p.239) the Blackfoot Nation/^{consented}~~agreed~~ that the other Indian tribes parties to said treaty, should have equal rights with themselves in said territory for ninety-nine years. The Blackfoot Nation has never relinquished said land, except to the extent of the aforesaid rights accorded to the Gros Ventres and Nez Perce tribes, plaintiffs here, and the Flathead Nation. Neither have the Gros Ventres or Nez Perce Indians ever relinquished their rights received under Article 3 of said Treaty.

The area of this territory is 12,138,160 acres (See Reply Int. Dept. dated October 24, 1929; R. p. 132). The total minimum value of the loss of the hunting rights of the plaintiffs therein is equal

