

8167.46, 238-281

Statutes: §§ 2, 14, 18, 21, 22, 23

§§ 4-5; 7; 10; 11; 12; 13

in Brief

# Court of Claims of the United States

No. H-248

(Decided March 4, 1935)

## THE CROW NATION OR TRIBE OF INDIANS OF MONTANA v. THE UNITED STATES

*Mr. Charles H. Merillat* for the plaintiff. *Mr. Charles J. Kappeler* and *Guinn & Maddox* were on the briefs.

*Messrs. Walter C. Shoup* and *George T. Stormont*, with whom was *Mr. Assistant Attorney General Harry W. Blair*, for the defendant.

This case having been heard by the Court of Claims, the court, upon the evidence adduced, makes the following

### SPECIAL FINDINGS OF FACT

I. This suit is brought under a special jurisdictional act, approved July 3, 1926 (44 Stat. 807), reading as follows:

*"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That jurisdiction be and is hereby conferred upon the Court of Claims, with right of appeal to the Supreme Court of the United States by either party, notwithstanding lapse of time or statutes of limitations, to hear, adjudicate, and render judgment in any and all claims arising under or growing out of the treaty of Fort Laramie, dated September 17, 1851 (Second Kappler, page 594), between the United States and the Crow Indian Nation and the treaty dated May 7, 1868 (Fifteenth Statutes, page 649), between the United States and the Crow Indian Nation, or arising under or growing out of the Executive order dated July 2, 1873 (First Kappler, page 855), or any subsequent Executive order, the act of Congress approved April 15, 1874 (Eighteenth Statutes, page 28), or any subsequent act of Congress or agreement with said Crow Indian Nation, which said Crow Indian Nation or any branch thereof may have against the United States, which claims have not heretofore been determined and adjudicated on their merits by the Court of Claims or the Supreme Court of the United States; and jurisdiction is hereby conferred upon the said courts to determine whether or not any provision in any such treaty or Executive order has been violated or breached by any act or acts of Congress or by any treaty made by the United States with any other Indian tribe or nation, and if so, to render judgment for the damages resulting therefrom.*

"SEC. 2. Any and all claims against the United States within the purview of this act shall be forever barred unless suit be instituted or petition filed as herein provided in the Court of Claims within five years from the date of approval of this act, and such suit shall make the Crow Nation or Tribe party plaintiff and the United States party defendant. The petition shall be verified by the attorney or attorneys employed to prosecute such claim or claims under contract with the Crow Tribe of Indians, approved by the Commissioner of Indian Affairs and the Secretary of the Interior; and said contract shall be executed in their behalf by a committee chosen by them under the direction and approval of the Commissioner of Indian Affairs and the Secretary of the Interior. Official letters, papers, documents, and records, or certified copies thereof, may be used in evidence, and the departments of the Government shall give access to the attorney or attorneys of said Crow Indian Nation to such treaties, papers, correspondence, or records as may be needed by the attorney or attorneys of said Indian nation.

"SEC. 3. That if any claim or claims be submitted to said court it shall determine the rights of the parties thereto, notwithstanding lapse of time or statutes of limitation, and any payment which may have been made by the United States upon any claim so submitted shall not be pleaded as an estoppel, but may be pleaded as a set-off in any suit; and the United States shall be allowed credit subsequent to the date of any law, treaty, or agreement under which the claims arise for any sum or sums heretofore paid or expended for the benefit of said Indians, including gratuities.

"SEC. 4. That if it be determined by the court that the United States, in violation of the terms and provisions of any law, treaty, agreement, or Executive order, set forth and referred to in section 1, has unlawfully appropriated or disposed of any money or other property belonging to the Indians, or obtained lands from the Crow Indians for an inadequate consideration under mistake of fact, damages therefor shall be confined to the value of the money or other property at the time of such appropriation or disposal, together with interest thereon at 4 per centum per annum from the date thereof; and with reference to all claims which may be the subject matter of the suits herein authorized, the decree of the court shall be in full settlement of all damages, if any, committed by the Government of the United States and shall annul and cancel all claim, right, and title of the said Crow Indians in and to such money or other property.

"SEC. 5. Upon final determination of such suit or suits the Court of Claims shall have jurisdiction to fix and determine a reasonable fee, not to exceed 10 per centum of the recovery, together with all necessary and proper expenses incurred in preparation and prosecution of the suit, to be paid to the attorneys employed by the said tribes or bands of Indians, or any of them, and the same shall be included in the decree and shall be paid out of any sum or sums found to be due said tribes.

"SEC. 6. The Court of Claims shall have full authority by proper orders and process to bring in and make parties to such suit any other tribe or band of Indians deemed by it necessary or proper to the final determination of the matters in controversy.

"SEC. 7. A copy of the petition shall, in such case, be served upon the Attorney General of the United States, and he, or some attorney from the Department of Justice to be designated by him, is hereby directed to appear and defend the interests of the United States in such case.

"SEC. 8. The proceeds of all amounts, if any, recovered for said Indians shall be deposited in the Treasury of the United States to the credit of the Indians decreed by said court to be entitled thereto, and shall draw interest at the rate of 4 per centum per annum from the date of the judgment or decree. The costs incurred in any suit hereunder shall be taxed against the losing party; if against the United States such costs shall be included in the amount of the judgment or decree, and if against said Indians shall be paid by the Secretary of the Treasury out of the funds standing to their credit in the Treasury of the United States: *Provided*, That actual costs necessary to be incurred by the Crow Indians as required by the rules of court in the prosecution of this suit shall be paid out of the funds of the Crow Tribe in the Treasury of the United States."

II. Under the provisions of the foregoing act the Crow Nation or Tribe of Indians of Montana filed its petition in this court on June 13, 1927.

III. The Crow Tribe or Nation is Siouan and part of the Hidatsa group from which it separated a century and a half or two centuries ago, withdrawing from the region of the Missouri River to the vicinity of the Rocky Mountains and along the Yellowstone River, which country it was occupying at the time the Treaty of Fort Laramie, hereinafter set out, was entered into.

IV. Following the discovery of gold on the Pacific coast, travel across the plains and through the country occupied by the plaintiff and other tribes increased greatly and caused great destruction of the buffalo and game, the chief means of livelihood of the plains and mountain Indians, and the grass and timber in the region traversed, occasioning serious resentment among the Indians in occupancy of the land, who considered themselves entitled to compensation for the right-of-way through the territory claimed by them, and also for the destruction of the buffalo, game, etc.

Prior to the year 1851 costly Indian wars had been experienced. The defendant was desirous of promoting peace among the various tribes and securing their friendship and the safe transit of emigrants over the plains.

To this end an appropriation was made by Congress February 27, 1851 (9 Stat. 572), to defray the "expenses of holding treaties with the wild tribes of the prairie, and for bringing delegates on to the seat of government." In compliance with the provisions of the said act the President appointed D. D. Mitchell, Superintendent of Indian Affairs, and Thomas Fitzpatrick, Indian agent, as commissioners to conduct the authorized negotiations. The commissioners were instructed that the Indians with whom the negotiations were to be held were "entirely ignorant of their position and relation to the Government", and should be made to understand the policy to be pursued by the Government towards them; that—

"A paramount objective will be \* \* \* to define by treaty stipulations what is and will be the reciprocal obligations existing between them and the Government and our citizens."

It was further stated:

"A portion of the tribes own or claim the country through which the inland routes pass to Oregon, California, Utah, and New Mexico. Our emigrants make free use of the grass and timber on the routes, and not only destroy much game, but disturb and scatter it so as materially to interfere with the success of the Indians in their hunting expeditions, by which they procure their only means of subsistence. For the unrestricted right-of-way through the country and for the other advantages enjoyed and the injuries committed by the emigrants, the Indians consider themselves entitled to a reasonable compensation, and have for some time been led to expect it by the promises which have been made on the authority of the Government. \* \* \* Justice and good policy, therefore, alike require that such compensation be made to the Indians as will satisfy their reasonable expectations and conciliate their good will."

It was added:

"It is important, if practicable, to establish for each tribe some fixed boundaries within which they should stipulate generally to reside, and each should agree not to intrude within the limits assigned to another tribe without its consent. If in arranging such boundaries, there should be a portion of country not included, where it has been their habit to go periodically in pursuit of game, it should be recognized as a neutral ground, where all will enjoy equal privileges and have no right to molest or interfere with one another."

In due course the following tribes of Indians assembled at Fort Laramie, Wyoming, to negotiate with the commissioners of the United States, the Sioux of the Missouri River country, the Assinaboins, Gros Ventres, Mandans, Arickarees, Cröws, Shoshones, Cheyennes, and Arapahoes, comprising all the important tribes of the Great Plains and eastern Rocky Mountains. A peace treaty was signed September 17, 1851 (11 Stat. 749; 4 Kappler 1065), to which the United States was party of the first part and the assembled Indian tribes parties of the second part, except the Shoshones, whom the commissioners did not consider were embraced within the terms of their authority. In the report by the defendant's commissioners dated November 11, 1851, it was stated that "the most important provisions" in the treaty were—

"1. The right \* \* \* granted \* \* \* to the United States to establish roads, military and other posts through the Indian country, so far as they claim or exercise ownership over it.

"2. The solemn obligation \* \* \* to maintain peaceful relations among themselves and to abstain from all depredations upon whites passing through the country, and to make restitution for any damage or loss that a white man shall sustain by the acts of their people.

"3. The settling up of all former complaints \* \* \* for the destruction of their buffalo, timber, grass, caused in passing of the whites through their country; \* \* \*

"4. The promise of annuity of \$50,000 for 50 years \* \* \*"

And further, that—

"The laying off of the country into geographical, or rather national domains, I regard as a very important measure, inasmuch as it will take away a great cause of quarrel among themselves, and at

the same time enable the Government to ascertain who are the depredators, should depredations hereafter be committed. The accompanying map, from which these national boundaries are clearly marked and defined, was made in the presence of the Indians, fully approved and sanctioned by all \* \* \* having the treaty in all its provisions, I am clearly of the opinion that it is the best that could have been made for both parties. I am moreover of the opinion that it will be observed and carried out in as good faith on the part of the Indians as it will on the part of the United States and the white people thereof. There was an earnest solemnity and deep conviction of the necessity of adopting some such measures evident in the conduct and manners of the Indians throughout the whole council."

V. The Treaty of Fort Laramie, dated September 17, 1851 (11 Stat. 749; 4 Kappler 1065), is as follows:

"TREATY OF FORT LARAMIE, 1851

"Articles of a treaty made and concluded at Fort Laramie, in the Indian Territory, between D. D. Mitchell, Superintendent of Indian Affairs, and Thomas Fitzpatrick, Indian agent, commissioners specially appointed and authorized by the President of the United States, of the first part, and the chiefs, headmen, and braves of the following Indian nations, residing south of the Missouri River, east of the Rocky Mountains, and north of the lines of Texas and New Mexico, viz, the Sioux or Dahcotahs, Cheyennes, Arrapahoes, Crows, Assinaboines, Gros Ventre, Mandans, and Arrickaras, parties of the second part, on the seventeenth day of September, A. D. one thousand eight hundred and fifty-one.

"ARTICLE 1. The aforesaid nations, parties to this treaty, having assembled for the purpose of establishing and confirming peaceful relations amongst themselves, do hereby covenant and agree to abstain in future from all hostilities whatever against each other, to maintain good faith and friendship in all their mutual intercourse, and to make an effective and lasting peace.

"ART. 2. The aforesaid nations do hereby recognize the right of the United States Government to establish roads, military and other posts, within their respective territories.

"ART. 3. In consideration of the rights and privileges acknowledged in the preceding article, the United States bind themselves to protect the aforesaid Indian nations against the commission of all depredations by the people of the said United States, after the ratification of this treaty.

"ART. 4. The aforesaid Indian nations do hereby agree and bind themselves to make restitution or satisfaction for any wrongs committed, after the ratification of this treaty, by any band or individual of their people, on the people of the United States, whilst lawfully residing in or passing through their respective territories.

"ART. 5. The aforesaid Indian nations do hereby recognize and acknowledge the following tracts of country, included within the metes and boundaries hereinafter designated, as their respective territories, viz:

"The territory of the Sioux or Dahcotah Nation, \* \* \*

"The territory of the Gros Ventre, Mandans, and Arrickaras Nations, \* \* \*

"The territory of the Assinaboine Nation, \* \* \*

"The territory of the Blackfoot Nation, \* \* \*

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

"The territory of the Cheyennes and Arrapahoes, \* \* \*

"It is, however, understood that in making this recognition and acknowledgment the aforesaid Indian nations do not hereby abandon or prejudice any rights or claims they may have to other lands; and further, that they do not surrender the privilege of hunting, fishing, or passing over any of the tracts of country heretofore described.

"ART. 6. The parties to (of) the second part of this treaty having selected principals or head chiefs for their respective nations, through whom all national business will hereafter be conducted, do hereby bind themselves to sustain said chiefs and their successors during good behavior.

"ART. 7. In consideration of the treaty stipulations, and for the damages which have or may occur by reason thereof to the Indian nations, parties hereto, and for their maintenance and the improvement of their moral and social customs, the United States bind themselves to deliver to the said Indian Nations the sum of \$50,000 per annum for the term of 10 years, with the right to continue the same at the discretion of the President of the United States for a period not exceeding five years thereafter, in provisions, merchandise, domestic animals, and agricultural implements, in such proportions as may be deemed best adapted to their condition by the President of the United States, to be distributed in proportion to the population of the aforesaid Indian nations.

"ART. 8. It is understood and agreed that should any of the Indian nations parties to this treaty violate any of the provisions thereof, the United States may withhold the whole or a portion of the annuities mentioned in the preceding article from the nation so offending, until, in the opinion of the President of the United States, proper satisfaction shall have been made.

"In testimony whereof the said D. D. Mitchell and Thomas Fitzpatrick, commissioners as aforesaid, and the chiefs, headmen, and braves, parties hereto, have set their hands and affixed their marks on the day and at the place first above written.

"D. D. MITCHELL,

"THOMAS FITZPATRICK,

"Commissioners.

\* \* \* \* \*

"Crows: (Arra-tu-ri-sash- (his x mark); Doh-chepit-seh-chi-es (his x mark)."

\* \* \* \* \*

The Blackfoot Nation did not reach Fort Laramie in time to take part in the treaty negotiations or to execute the treaty. It subsequently made a separate treaty in harmony with the foregoing.

The territory of the Crow Nation as described in the said treaty contained 38,531,174 acres, of which 20,611,584 acres were in what is now the State of Montana and 17,919,590 in Wyoming.

There is no satisfactory proof that the Crow Nation did not receive from the United States all that was due it under this treaty in value of annuity goods, but its members were not in fact fully protected against the commission of depredations by the people of the United States. On the other hand plaintiff appears fairly to have observed its own obligations under the treaty. Many complaints were made from time to time by plaintiff to defendant's representatives of encroachments upon its territory by whites and by other Indians, and that defendant was not observing its treaty obligations. The members of the plaintiff tribe were familiar with the history of the Fort Laramie Treaty of 1851 and later occurrences; believed that the treaty was made to form peace between themselves and other tribes, in consideration for which the Government had agreed to give them rations for fifty years (later reduced to ten years); and knew their territory by river or mountain marks. Their land was valuable to them because it contained their livelihood; their wants were supplied from their gardens which they planted and wild roots and berries which grew abundantly, and the hunting of buffalo and other game furnished them with meat and clothing.

Members of the tribes were not advanced in white civilization, were illiterate, but were capable, adventurous, and warlike in Indian matters.

For a number of years prior to 1851 and continually thereafter they were, as a tribe, friendly toward the whites, and depredations committed by members of the tribe were relatively few. They were virtually surrounded by hostile tribes, with whom they were in conflict, and by their friendship for the whites they incurred the enmity of other tribes.

There was an increasing influx and settlement of white immigrants upon their reservation, notwithstanding which they maintained in general peaceful relations with them, and on several occasions Crow warriors served as scouts with Federal troops operating against other tribes.

VI. The Treaty of Fort Laramie of September 17, 1851, was approved by the Senate May 24, 1852, after amending article 7, as provided above, by reducing the period of annual payments from 50 to 10 years with authority, in the discretion of the Executive, to extend its terms for an additional period of 5 years.

The treaty as modified was returned to the tribes concerned and the assent of all was in due course secured, that of the Crow Tribe or Nation September 18, 1854. Due to an administrative oversight the treaty was never formally proclaimed. However, Congress thereafter made annual appropriations to carry its terms into effect.

VII. Owing to the failure of the formality of proclaiming and establishing the treaty of Fort Laramie, the defendant's adminis-

trative officials erroneously assumed that it had not been ratified; that its provisions were not binding upon the defendant Government and that the plaintiff was not possessed of any property or reservation rights thereunder.

VIII. About 1859 a portion of the Crow Tribe or Nation left that section of the country where the entire tribe had lived, viz, the reservation provided for it by the Fort Laramie treaty of 1851, and occupied the country along the Missouri River and its northern tributary, the Milk River, outside the boundaries of the territory recognized by the Fort Laramie treaty of 1851 as belonging to the Crow Nation. Thereafter those living along the Missouri and Milk Rivers became known as the River Crows, and those remaining in the reservation as Mountain Crows. The two sections had separate chiefs, but there was no ethnic, linguistic, or other difference between them, and they had the same customs, the same enemies, and were closely connected with each other through intermarriage. They frequently visited each other, and when the River Crows came to the Crow reservation they participated in annuity benefits as members of the Crow Tribe or Nation.

IX. Following the outbreak of the Civil War or War between the States many of the tribes west of the Mississippi River, but not including the plaintiff, resumed their hostilities. Frontier settlements were attacked, communications between the Mississippi Valley and the Pacific coast were interrupted and emigrant trains were attacked and destroyed. In 1865 military operations against the offending tribes were pushed with vigor, with the result that the warring tribes sued for peace. A commission was in due course appointed by the President and proceeded to the regions of the upper Arkansas and upper Missouri to negotiate the treaties of peace.

X. On July 16, 1866, the Crow Nation or Tribe of Indians and a commission appointed by the President signed articles of agreement whereby the parties thereto undertook to maintain peaceful relations with each other; the Crows to grant and convey to the United States "the right to lay out and construct roads, highways, and telegraph lines up the valley of the Yellowstone River to Virginia City and Helena in Montana"; to grant to the United States "the privilege of establishing depots and military and stage stations at suitable points along said line"; and to convey "all right to such reservations, not exceeding ten miles square at each point, for survey settlement and cultivation, at the discretion of the United States"; the United States undertaking to expend for the Crows \$25,000 annually for 20 years for useful goods and provision and other articles and certain annuities to individuals, and to establish an agent and agency at or near the mouth of Milk River.

These articles of agreement were never ratified by the Senate of the United States and did not become a treaty.

The United States was accorded by plaintiff the privileges provided for in the articles of agreement.

In 1867 and 1868 Congress appropriated for the purpose of carrying out the provisions of these articles and there was disbursed for the benefit of the Crow Tribe \$27,300.

XI. On November 12 and 13, 1867, a commission appointed by the President held a council with the Crow Nation and other tribes for the purpose of negotiating a treaty, relieving the Indians from encroachments on their lands by white people and setting apart for the Indians reservations free from trespass. The commission heard complaints from Indians present, but no treaty was signed at that time. This council was attended by one of the River Crow chiefs, Wolf Bow.

XII. On April 30, 1868, C. E. Mix, Acting Commissioner of Indian Affairs, in writing instructed W. J. Cullen, special agent for Montana, as follows:

"You have been designated and appointed by the President, a commissioner to negotiate treaties with such of the tribes of Montana Terr'y. as may be advisable, with a view to the extinguishment of their title to the lands claimed by them, and to their location upon suitable reservations with means to enable them to engage in agricultural and other pursuits.

"It is desirable that treaties should be made with the following nations or tribes: The Blackfeet, Crows, Gros Ventres, and, perhaps the mixed Bennocks and Shoshones. Your utmost efforts therefore will be directed to the accomplishment of this object.

\* \* \* \* \*

"It is desirable that both bands of the Crows be treated with as one tribe or nation and concentrated upon one reservation, but if in this latter respect it be deemed impracticable because of a refusal of the parties to live together, you will arrange for separate reservations for them in the countries they respectively occupy; or if it be necessary you will make a treaty with each band, it being understood and so expressed in the instruments that each assents to the relinquishment made of the right and interest which both have in the country ceded. The mountain Crows by agreement were to meet the peace commission this spring—who are now in the upper Platte country for the purpose of meeting also the hostile Sioux, and it is probable that some treaty arrangements will have been made with this band before you reach Montana. It is not likely however that their treaty will embrace the provisions contemplated by your mission and these instructions, and you will therefore treat with this band for the objects stated, either as a part of the Crow Nation or jointly with the river band, as before directed.

"The Gros Ventre Tribe, though comprising a part of the Blackfeet Nation, it has been represented to this dept. are not on friendly terms with the other portion of the nation and will not live with them, but they are friendly to the Crows and related by intermarriages.

"These Indians, it is thought, should be placed on a reservation with the Crows. In the treaty you may make with them provisions should be made for locating them with that tribe upon one reservation and under the same agency, with the right, if it is deemed expedient, given to the Gros Ventres east of the Missouri to join them.

\* \* \* \* \*

"The foregoing indicates, it is thought, sufficiently the views of the dept. in reference to the matter of your negotiating treaties with the tribes named to enable you to effect such judicious arrangements as will not only be acceptable and beneficial to the Indians but also conduce to the peace, security, and welfare of the citizens of Montana.

\* \* \* \* \*

XIII. On May 7, 1868, the commission appointed and acting as described in Finding XI herein, signed at Fort Laramie a treaty with the Crow Nation or Tribe of Indians, which was ratified by the Senate July 25, 1868, and proclaimed by the President August 12, 1868. This treaty (15 Stat. 649) is as follows:

"Articles of a treaty made and concluded at Fort Laramie, Dakota Territory, on the seventh day of May, in the year of our Lord one thousand eight hundred and sixty-eight, by and between the undersigned commissioners on the part of the United States, and the undersigned chiefs and headmen of and representing the Crow Indians, they being duly authorized to act in the premises.

"ARTICLE I. From this day forward peace between the parties to this treaty shall forever continue. The Government of the United States desires peace, and its honor is hereby pledged to keep it. The Indians desire peace, and they hereby pledge their honor to maintain it. If bad men among the whites or among other people, subject to the authority of the United States, shall commit any wrong upon the person or property of the Indians, the United States will, upon proof made to the agent and forwarded to the Commissioner of Indian Affairs at Washington City, proceed at once to cause the offender to be arrested and punished according to the laws of the United States, and also reimburse the injured person for the loss sustained.

"If bad men among the Indians shall commit a wrong or depredation upon the person or property of any one, white, black, or Indian, subject to the authority of the United States and at peace therewith, the Indians herein named solemnly agree that they will, on proof made to their agent and notice by him, deliver up the wrongdoer to the United States, to be tried and punished according to its laws; and in case they refuse wilfully so to do the person injured shall be reimbursed for his loss from the annuities or other moneys due or to become due to them under this or other treaties made with the United States. And the President, on advising with the Commissioner of Indian Affairs, shall prescribe such rules and regulations for ascertaining damages under the provisions of this article as in his judgment may be proper. But no such damages shall be adjusted and paid until thoroughly examined and passed upon by the Commissioner of Indian Affairs, and no one sustaining loss while violating, or because of his violating, the provisions of this treaty or the laws of the United States shall be reimbursed therefor.

"ARTICLE II. The United States agrees that the following district of country, to wit: commencing where the 107th degree of longitude west of Greenwich crosses the south boundary of Montana Territory; thence north along said 107th meridian to the mid-channel of the Yellowstone River; thence up said mid-channel of the Yellowstone to the point where it crosses the said southern boundary of Montana,

being the 45th degree of north latitude; and thence east along said parallel of latitude to the place of beginning, shall be, and the same is, set apart for the absolute and undisturbed use and occupation of the Indians herein named, and for such other friendly tribes or individual Indians as from time to time they may be willing, with the consent of the United States, to admit amongst them; and the United States now solemnly agrees that no persons, except those herein designated, and authorized so to do, and except such officers, agents, and employes of the government as may be authorized to enter upon Indian reservations in discharge of duties enjoined by law, shall ever be permitted to pass over, settle upon, or reside in the territory described in this article for the use of said Indians, and henceforth they will, and do hereby, relinquish all title, claims, or rights in and to any portion of the territory of the United States, except such as is embraced within the limits aforesaid.

"ARTICLE III. The United States agrees, at its own proper expense, to construct on the south side of the Yellowstone, near Otter creek, a warehouse or storeroom for the use of the agent in storing goods belonging to the Indians, to cost not exceeding twenty-five hundred dollars; an agency building for the residence of the agent, to cost not exceeding three thousand dollars; a residence for the physician, to cost not more than three thousand dollars; and five other buildings, for a carpenter, farmer, blacksmith, miller, and engineer, each to cost not exceeding two thousand dollars; also a schoolhouse or mission building, so soon as a sufficient number of children can be induced by the agent to attend school, which shall not cost exceeding twenty-five hundred dollars.

"The United States agrees further to cause to be erected on said reservation, near the other buildings herein authorized, a good steam circular sawmill, with a gristmill and shingle machine attached, the same to cost not exceeding eight thousand dollars.

"ARTICLE IV. The Indians herein named agree, when the agency house and other buildings shall be constructed on the reservation named, they will make said reservation their permanent home, and they will make no permanent settlement elsewhere, but they shall have the right to hunt on the unoccupied lands of the United States so long as game may be found thereon, and as long as peace subsists among the whites and Indians on the borders of the hunting districts.

"ARTICLE V. The United States agrees that the agent for said Indians shall in the future make his home at the agency building; that he shall reside among them and keep an office open at all times for the purpose of prompt and diligent inquiry into such matters of complaint, by and against the Indians, as may be presented for investigation under the provisions of their treaty stipulations, as also for the faithful discharge of other duties enjoined on him by law. In all cases of depredation on person or property, he shall cause the evidence to be taken in writing and forwarded, together with his finding, to the Commissioner of Indian Affairs, whose decision shall be binding on the parties to this treaty.

"ARTICLE VI. If any individual belonging to said tribes of Indians, or legally incorporated with them, being the head of a family, shall desire to commence farming, he shall have the privilege to select, in the presence and with the assistance of the agent then

in charge, a tract of land within said reservation, not exceeding three hundred and twenty acres in extent, which tract, when so selected, certified, and recorded in the 'Land Book', as herein directed, shall cease to be held in common, but the same may be occupied and held in the exclusive possession of the person selecting it, and of his family, so long as he or they may continue to cultivate it.

"Any person over eighteen years of age, not being the head of a family, may in like manner select and cause to be certified to him or her, for purposes of cultivation, a quantity of land not exceeding eighty acres in extent, and thereupon be entitled to the exclusive possession of the same as above directed.

"For each tract of land so selected a certificate, containing a description thereof and the name of the person selecting it, with a certificate endorsed thereon that the same has been recorded, shall be delivered to the party entitled to it by the agent, after the same shall have been recorded by him in a book to be kept in his office, subject to inspection, which said book shall be known as the 'Crow Land Book.'

"The President may at any time order a survey of the reservation, and, when so surveyed, Congress shall provide for protecting the rights of settlers in their improvements, and may fix the character of the title held by each. The United States may pass such laws on the subject of alienation and descent of property as between Indians, and on all subjects connected with the government of the Indians on said reservations and the internal police thereof, as may be thought proper.

"ARTICLE VII. In order to insure the civilization of the tribe entering into this treaty, the necessity of education is admitted, especially by such of them as are, or may be, settled on said agricultural reservation; and they therefore pledge themselves to compel their children, male and female, between the ages of six and sixteen years, to attend school; and it is hereby made the duty of the agent for said Indians to see that this stipulation is strictly complied with; and the United States agrees that for every thirty children, between said ages, who can be induced or compelled to attend school, a house shall be provided, and a teacher, competent to teach the elementary branches of an English education, shall be furnished, who will reside among said Indians, and faithfully discharge his or her duties as a teacher. The provisions of this article to continue for twenty years.

"ARTICLE VIII. When the head of a family or lodge shall have selected lands and received his certificate as above directed, and the agent shall be satisfied that he intends in good faith to commence cultivating the soil for a living, he shall be entitled to receive seeds and agricultural implements for the first year in value one hundred dollars, and for each succeeding year he shall continue to farm, for a period of three years more, he shall be entitled to receive seeds and implements as aforesaid in value twenty-five dollars per annum.

"And it is further stipulated that such persons as commence farming shall receive instructions from the farmer herein provided for, and whenever more than one hundred persons shall enter upon the cultivation of the soil, a second blacksmith shall be provided, with such iron, steel, and other material as may be required.

"ARTICLE IX. In lieu of all sums of money or other annuities provided to be paid to the Indians herein named, under any and all treaties heretofore made with them, the United States agrees to deliver at the agency house, on the reservation herein provided for, on the first day of September of each year for thirty years, the following articles, to wit:

"For each male person, over fourteen years of age, a suit of good substantial woolen clothing, consisting of coat, hat, pantaloons, flannel shirt, and a pair of woolen socks.

"For each female, over twelve years of age, a flannel skirt, or the goods necessary to make it, a pair of woolen hose, twelve yards of calico, and twelve yards of cotton domestics.

"For the boys and girls under the ages named, such flannel and cotton goods as may be needed to make each a suit as aforesaid, together with a pair of woolen hose for each.

"And in order that the Commissioner of Indian Affairs may be able to estimate properly for the articles herein named, it shall be the duty of the agent, each year, to forward to him a full and exact census of the Indians, on which the estimate from year to year can be based.

"And, in addition to the clothing herein named, the sum of ten dollars shall be annually appropriated for each Indian roaming, and twenty dollars for each Indian engaged in agriculture, for a period of ten years, to be used by the Secretary of the Interior in the purchase of such articles as, from time to time, the condition and necessities of the Indians may indicate to be proper. And if, at any time within the ten years, it shall appear that the amount of money needed for clothing, under this article, can be appropriated to better uses for the tribe herein named, Congress may, by law, change the appropriation to other purposes; but in no event shall the amount of this appropriation be withdrawn or discontinued for the period named. And the President shall annually detail an officer of the Army to be present and attest the delivery of all the goods herein named to the Indians, and he shall inspect and report on the quantity and quality of the goods and the manner of their delivery; and it is expressly stipulated that each Indian over the age of four years, who shall have removed to and settled permanently upon said reservation, and complied with the stipulations of this treaty, shall be entitled to receive from the United States for the period of four years after he shall have settled upon said reservation, one pound of meat and one pound of flour per day, provided the Indians cannot furnish their own subsistence at an earlier date. And it is further stipulated, that the United States will furnish and deliver to each lodge of Indians, or family of persons legally incorporated with them, who shall remove to the reservation herein described, and commence farming, one good American cow and one good, well-broken pair of American oxen, within sixty days after such lodge or family shall have so settled upon said reservation.

"ARTICLE X. The United States hereby agrees to furnish annually to the Indians the physician, teachers, carpenter, miller, engineer, farmer, and blacksmiths as herein contemplated, and that such appropriations shall be made from time to time, on the estimates of the Secretary of the Interior, as will be sufficient to employ such persons.

"ARTICLE XI. No treaty for the cession of any portion of the reservation herein described, which may be held in common, shall be of any force or validity as against the said Indians unless executed and signed by, at least, a majority of all the adult male Indians occupying or interested in the same, and no cession by the tribe shall be understood or construed in such manner as to deprive, without his consent, any individual member of the tribe of his right to any tract of land selected by him as provided in article VI of this treaty.

"ARTICLE XII. It is agreed that the sum of five hundred dollars annually, for three years from the date when they commenced to cultivate a farm, shall be expended in presents to the ten persons of said tribe who, in the judgment of the agent, may grow the most valuable crops for the respective year.

" W. T. SHERMAN, *Lt. Genl.*

" W. M. S. HARNEY,

" *Bvt. Majr. Gen. & Peace Commissioner.*

" ALFRED H. TERRY, *Bvt. M. Genl.*

" C. C. AUGUR, *Bvt. M. Genl.*

" JOHN B. SANBORN,

" S. F. TAPPAN.

" ASHTON S. H. WHITE, *Secretary.*

" CHE-RA-PEE-ISH-KA-TE, Pretty Bull, his x mark.

" CHAT-STA-HE, Wolf Bow, his x mark.

" AH-BE-CHE-SE, Mountain Tail, his x mark.

" KAM-NE-BUT-SA, Black Foot, his x mark.

" DE-SAL-ZE-CHO-SE, White Horse, his x mark.

" CHIN-KA-SHE-ARACHE, Poor Elk, his x mark.

" E-SA-WOOR, Shot in the Jaw, his x mark.

" E-SHA-CHOSE, White Forehead, his x mark.

" ——— ROO-KA, Pounded Meat, his x mark.

" DE-KA-KE-UP-SE, Bird in the Neck, his x mark.

" ME-NA-CHE, The Swan, his x mark.

[SEAL]

The territory reserved to the Crow Nation or Tribe by this treaty, described in article II thereof, consisted of 8,000,409.2 acres, or 30,530,764.8 acres less than that reserved thereto under the Fort Laramie treaty of 1851, and was embraced within the boundaries of the larger territory.

No part of the remainder of 30,530,764.8 acres has ever been restored to the plaintiff, but has been otherwise disposed of or retained by the United States. The plaintiff tribe roamed and hunted over this remaining tract until forced therefrom by white occupancy or the destruction of game.

In compliance with the obligations assumed under this treaty the United States expended during the period 1870 to 1927 for the benefit of the Crow Nation \$1,499,866.16, and in addition thereto also for its benefit, although not obligated thereunder, \$1,337,486.80, a total of \$2,837,352.96.

XIV. On July 15, 1868, W. J. Cullen, acting under instructions to him of April 30, 1868 (finding XII), and representatives of the River Crow band, signed at Fort Hawley, Territory of Montana, the following articles of agreement:

"Articles of agreement and convention made and concluded at Fort Hawley, Montana Territory, on the 15th day of July, in the

year of our Lord one thousand eight hundred and sixty-eight, by and between W. J. Cullen, commissioner, duly appointed and authorized, on the part of the United States, and the chiefs, headmen, and delegates representing the River Crow Tribe of Indians, they being duly authorized for such purposes by their tribes.

"ARTICLE I. Perpetual peace, friendship, and amity shall hereafter exist between the United States and the River Crow Tribe of Indians, parties to this treaty.

"ARTICLE II. The aforementioned tribe of Indians do hereby mutually, jointly, and severally agree and covenant that they will maintain peaceful and friendly relations among themselves and cultivate mutual good-will and friendship, not only among themselves; but towards any other tribe or tribes, that may dwell upon the reserved lands as in Article Third described and set forth or adjacent thereto.

"ARTICLE III. We, the chiefs, headmen, and delegates of the River Crow Tribe of Indians, as hereinafter signed by us, and being by our said tribe thereunto authorized and directed, do hereby cede and forever relinquish and surrender to the United States all their right, title, claim, and interest in and to all lands claimed, held, or possessed by them wherever situated; said lands being more particularly described as follows, namely, commencing at a point where the Powder River empties into the Yellowstone River; thence up said Powder River to its source, including all its tributaries; thence southerly in a straight line from the Puplein Butte on Powder River to the Platte River, at or near the Red Butte; thence easterly to the base of the Rocky Mountains, intersecting the headwaters of the Missouri River; thence northeasterly in a straight line to the Muscleshell River; thence down said Muscleshell River to its junction with the Missouri River; thence down the Missouri to its junction with the Dry Fork; thence up said Dry Fork to its source; thence easterly to the place of beginning. And it is hereby agreed by the parties to this treaty that the said River Crow Tribe of Indians shall be located upon a certain tract of country reserved and set apart for the use and benefit of the Blackfeet Nation and Gros Ventres Tribe of Indians; said land being more particularly described and set forth in a treaty made and concluded at Fort Hawley, Montana Territory, July 13, 1868, between the United States and the Gros Ventres Tribe of Indians, whereby stipulations are made for the location of said Crow Indians on a reservation adjoining that of the Gros Ventres to be under the supervision and control of the same agent, occupying and using in common all agency buildings, together with the services of such of the employes as may be deemed practicable, and to be treated in all respects as owners in common of said lands, and entitled to all the privileges and benefits thereto pertaining, the same in all respects as though they were parties to the Gros Ventres treaty, and the said Crow Tribe of Indians shall be protected in such location against any annoyance or molestation on the part of the whites or Indians; and they do hereby agree that so soon as suitable agency buildings are erected they will settle permanently upon said reservation and do all in their power to encourage agricultural pursuits among their people.

"ARTICLE IV. No white person, unless in the employment of the United States, or duly licensed to trade with the Indians located on the reserved land hereinbefore stated, or members of the families of such persons, shall be permitted to reside or make any settlement upon any portion of said tract or portion of country so reserved and set apart as aforesaid, nor shall the said Indians alienate, sell, or in any manner dispose of any portion thereof except to the United States.

"ARTICLE V. The said tribe of Indians, parties to this treaty, desire to exclude from the tract of country reserved as hereinbefore stated and set forth, the use of ardent spirits or other intoxicating liquor, and to prevent their people from drinking or using the same; therefore it is provided that any Indian or half-breed belonging to said tribe who is guilty of bringing such liquor into the Indian country, or who drinks the same, may have his or her proportion of the annuities hereinafter mentioned withheld from him or her for such time as the President may determine, and they shall likewise be liable to the same punishment as white persons for the same offense under the laws of the United States.

"ARTICLE VI. The Crow Tribe of Indians, parties to this treaty, hereby acknowledge their dependence upon the United States, and their obligation to obey the laws thereof; and they further agree and obligate themselves to submit to and obey said laws and all other laws which shall be made by Congress for their government and for the punishment of offenses; and they agree to exert themselves to the utmost of their ability in enforcing all those laws under direction of the Superintendent of Indian Affairs, or agent, and they pledge and bind themselves to preserve friendly relations with the citizens of the United States, and to commit no injuries to or depredations on their persons or property; they also agree to deliver to the proper officer or officers of the United States all offenders against treaties, laws, or regulations of the United States, and to assist in discovering, pursuing, and capturing all such offenders against the treaties, laws, or regulations of the United States who may be within the limits of the country reserved, and set apart for the use of the said Crow and other tribes of Indians, whenever required to do so by said officer or officers. And the said Crow Tribe of Indians, parties to this treaty, agree that they will not make war upon any other tribe, except in self-defense, but will submit all matters of difference between themselves and other Indians to the United States for adjustment, and will abide thereby; and if any of the said Indians, parties to this treaty, commit depredations upon any other Indians within the jurisdiction of the United States, the same rule shall prevail in regard to compensation and punishment as in the cases of depredations against citizens of the United States.

"ARTICLE VII. In consideration of the foregoing agreements, stipulations, and cessions, and on condition of their faithful observance by the said tribe of Indians, parties to this treaty, the United States agree to expend annually for the Crow Tribe of Indians, in addition to the goods and provisions distributed at the time of signing this treaty, for and during the term of twenty years from and after the ratification of this treaty, the several sums and for the purposes following, to wit:

"For the support of one physician and for the purchase of medicines, \$800.

"For one blacksmith, \$500.

"For one school-teacher and the necessary books and stationery for the school, \$450.

"For the instruction of said Indians in farming and for the purchase of seeds, etc., \$600; and for annuity payments, the sum of twenty-five thousand dollars to be expended in such useful goods, provisions, and other articles as the Secretary of the Interior, at his discretion, may from time to time determine: *Provided*, That so much of said annual sum of twenty-five thousand dollars as the Secretary of the Interior shall deem proper may be expended in stock animals, and agricultural implements, and in establishing and instructing in agricultural and mechanical pursuits such of said Indians as shall be disposed thereto, and in the employment of mechanics for them, and providing care and support for the sick and infirm and helpless orphans of their number, and in any other respect promoting their civilization and improvement. And to enable said tribe of Indians, parties to this treaty, to enter upon a civilized career free from all indebtedness the United States further agree that, in addition to the annuities above stipulated to be paid, to pay all such persons as may be entitled thereto such sum or sums as the said tribe of Indians may be justly indebted to them in, by reason of such persons having furnished goods, provisions, or supplies to said tribe of Indians, or by reason of depredations heretofore committed upon the property of such persons by said Indians, not exceeding in all the sum of twenty-five thousand dollars.

"ARTICLE VIII. The half-breeds of said tribe and those persons, citizens of the United States, who have intermarried with Indian women of said tribe, and continue to maintain domestic relations with them, shall not be compelled to remove to said reservation, but shall be allowed to remain undisturbed upon the lands hereinabove ceded and relinquished to the United States; and they shall be allowed each to select from said ceded lands one hundred and sixty acres of land (not mineral), including as far as possible their present homesteads, the boundaries of the same to be made to conform as far as practicable to the United States surveys; and when so selected the President of the United States shall issue to each of said persons so selecting the same a patent for such quarter section of land, with such restrictions on the power of alienation as in his discretion he may see fit to impose; and until such patent shall issue there shall be no power of alienation of said lands by any person for whose benefit such selections are authorized to be made; and it is further understood and agreed that the half-breeds of said tribe shall share equally per capita with the Indians aforementioned in the distribution of annuity goods, and that the said tribe of Indians shall have the right to select and appoint a proper and suitable person to assist in the distribution of annuity goods, and see that they are distributed fairly and equally.

"ARTICLE IX. It is understood and agreed by and between the parties to this treaty that if any of the Indian parties hereto shall violate any of the stipulations herein contained the United States

may withhold, for such length of time as the President and Congress may determine, any portion or all of the annuities agreed to be paid to said tribe under provisions of this treaty.

"ARTICLE X. This treaty shall be obligatory upon the contracting parties whenever the same shall be ratified by the President and the Senate of the United States, and shall continue in force for twenty years, from and after the said date, unless sooner violated and broken by said Indians.

"In testimony whereof the said W. J. Cullen, commissioner on the part of the United States, and the undersigned chiefs, headmen, and delegates of the aforesaid tribe of Indians, parties to this treaty, have hereunto set their hands and seals at the place and on the day and year hereinbefore written.

"W. J. CULLEN, Commissioner.	[SEAL]
"HORSE GUARD (his x mark).	[SEAL]
"WHITE SIDE (his x mark).	[SEAL]
"LITTLE SOLDIER (his x mark).	[SEAL]
"TWO WEASEL (his x mark).	[SEAL]
"TWO BELLY WOMAN (his x mark).	[SEAL]
"SPANIARD (his x mark).	[SEAL]
"MEDICINE HAIR (his x mark).	[SEAL]
"LINKEY (his x mark).	[SEAL]
"BULLS NOSE (his x mark).	[SEAL]
"LONG NECK (his x mark).	[SEAL]
"BULLS COCK (his x mark).	[SEAL]
"THE WOODCUTTER (his x mark).	[SEAL]
"WOLF POISON (his x mark).	[SEAL]
"THE EATING MAN (his x mark).	[SEAL]
"THE ONE THAT IS IN EVERY WAY (his x mark).	[SEAL]"

These articles were not ratified by the Senate of the United States and did not become a treaty.

No part of the territory therein referred to (article III) as reserved to the Indians under treaty with the Gros Ventres Tribe July 13, 1868, was within the territory reserved to the Crow Nation or Tribe in the Fort Laramie treaty of 1851. The cession described in article III was substantially the territory reserved to the Crow Nation by the Fort Laramie treaty of 1851.

During the fiscal years 1871 to 1876, inclusive, the Government appropriated and disbursed a total net sum of \$155,398.81 for the benefit of the River Crow Band for the purpose of complying with article VII of the articles of agreement.

XV. On July 5, 1873, the President of the United States ordered that the following described tract of land be set apart as a reservation for the Gros Ventre, Piegan, Blood, Blackfeet, River Crow, and other Indians:

"Commencing at the northwest corner of the Territory of Dakota, being the intersection of the forty-ninth parallel of north latitude and the one hundred and fourth meridian of west longitude; thence south to the south bank of the Missouri River; thence up and along the south bank of said river to a point opposite the mouth of Medicine or Sun River, thence in a westerly direction, following the south bank of said Medicine or Sun River, as far as practicable, to the summit of the main chain of the Rocky Mountains; hence along said summit in a northerly direction to the north boundary of Montana;

hence along said north boundary to the place of beginning, excepting and reserving therefrom existing military reservations."

The reservation thus set aside consisted of 23,252,890 acres and no part of it was embraced in the tract set aside for the Crow Nation or Tribe in the Fort Laramie treaty of 1851.

XVI. By the act of April 15, 1874, 18 Stat. 28, it was provided:

"That the following described tract of country, in the Territory of Montana, be, and the same is hereby, set apart for the use and occupation of the Gros Ventre, Piegan, Blood, Blackfoot, River Crow, and such other Indians as the President may, from time to time, see fit to locate thereon, viz: Commencing at the northwest corner of the Territory of Dakota, being the intersection of the forty-ninth parallel of north latitude and the one hundred and fourth meridian of west longitude; thence south to the south bank of the Missouri river; thence up and along the south bank of said river, to a point opposite the mouth of the Maria's river; thence along the main channel of the Maria's River to Birch Creek; thence up the main channel of Birch Creek to its source; thence west to the summit of the main chain of the Rocky Mountains; thence along the summit of the Rocky Mountains to the northern boundary of Montana; thence along said northern boundary to the place of beginning."

This reservation was within the territory reserved July 5, 1873 (finding XV), and consisted of 19,746,202 acres, a decrease of 3,506,688 acres. This difference of 3,506,688 acres between the reservation of July 5, 1873, and that of April 15, 1874, was restored by the President to the public domain August 19, 1874.

XVII. On April 13, 1875, the President withdrew from sale and set apart as an addition to the then reservation for the "Gros Ventre, Piegan, Blood, Blackfeet, and Crow Indians" (1 Kappler 856), the following described tract:

"Commencing at a point on the Musselshell River where the same is intersected by the forty-second [forty-seventh] parallel of north latitude; thence east with said parallel to the south bank of the Yellowstone River; thence down and with the south bank of said river to the south boundary of the military reservation at Fort Buford; thence west along the south boundary of said military reservation to its western boundary; thence north along said western boundary to the south bank of the Missouri River; thence up and with the south bank of said river to the mouth of the Musselshell River; thence up the middle of the main channel of said Musselshell River to the place of beginning."

The area so added comprised 6,682,522 acres, of which 816,532 acres were in the reservation created for the Crows by the Fort Laramie treaty of 1851, and none in the reservation of May 7, 1868, to the Crow Nation or Tribe (finding XIII).

An Executive order was issued July 13, 1880, as follows:

"It is hereby ordered that the tract of country in the Territory of Montana, being a portion of the tract of country which was set aside by Executive order of the 13th of April 1875, as an addition to the then existing reservation for the Gros Ventre, Piegan, Blood, Blackfeet, and Crow Indians, known as the Blackfeet Reservation, and lying within the following-described boundaries, viz: Beginning at a point where the south boundary of the Fort Buford military

reserve intersects the right bank of the Yellowstone River; thence according to the true meridian west along the south boundary of said military reserve to its western boundary; thence continuing west to the right bank of the Missouri River; thence up and along said right bank, with the meanders thereof, to the middle of the main channel of the Musselshell River; thence up and along the middle of the main channel of the Musselshell River, with the meanders thereof, to its intersection with the forty-seventh parallel of north latitude, thence east along said parallel to its intersection with the right bank of the Yellowstone River; thence down and along said right bank, with the meanders thereof, to the place of beginning, be, and the same hereby is, restored to the public domain.

“R. B. HAYES.”

The territory thus added to the public domain July 13, 1880, consisted of approximately 5,439,282 acres, of which 816,532 acres had been included in Crow territory by the Fort Laramie treaty of 1851, and the whole of which, 5,439,282 acres, had been included in the addition of 6,682,522 acres April 13, 1875, to the then existing reservation for the Gros Ventre, Piegan, and other named Indians. The net addition to the said reservation was therefore 1,243,240 acres.

XVIII. In or about the year 1868 the Bureau of Indian Affairs definitely adopted the policy of treating the River Crows as an inseparable part of the Crow Nation or Tribe, and made repeated efforts to reunite them with the main tribe. There is no satisfactory proof that force was employed to consolidate the tribal bands but it does appear that the River Crows were reluctant to leave the territory of the Missouri River and did so solely at the instance of Government officials and after much persuasion. At first a few moved temporarily to the Crow Reservation, drifting back later to the Missouri River. Eventually they all returned or migrated to the Crow Reservation, to which they became more attached in course of time, and by 1880 all of the River Crows had settled permanently with the main tribe on the reservation of May 7, 1868.

XIX. After the return of the River Crows from the Missouri River country and their permanent settlement upon the Crow Reservation, the Crow Tribe made several cessions of land out of their 1868 reservation, as follows:

(a) Cession ratified by act of Congress, approved April 11, 1882 (22 Stat. 42), of approximately 1,559,000 acres in consideration of the appropriation annually for 25 years of \$30,000, to be expended for the benefit of the Crow Indians;

(b) Cession ratified by act of Congress, approved July 10, 1882 (22 Stat. 157), of approximately 5,650 acres, along the northern border of their reservation, for the use of the Northern Pacific Railroad, for right-of-way and station grounds, for a consideration of \$25,000;

(c) A cession authorized by act of Congress, approved March 3, 1887 (24 Stat. 545), and consented to by the Indians on June 4, 1887, of 700.52 acres, for the use of the Rocky Ford & Cook City R. R. Co. as a right-of-way, etc., for which \$875.64 was paid and disbursed for the benefit of the Crow Tribe;

(d) A cession authorized by acts of Congress, approved February 12, 1889 (25 Stat. 660), and March 1, 1893 (27 Stat. 529), con-

sented to by the Indians, of 1,377.8 acres, for the use of the Big Horn Southern R. R. Co. as a right-of-way, etc., for which \$4,133.40 was paid and disbursed for the benefit of the Crow Tribe;

(e) A cession ratified by act of Congress, approved March 3, 1891 (26 Stat. 1039), of approximately 1,208,960 acres for a consideration of \$946,000, to be disbursed for the benefit of the Crows;

(f) A cession ratified by act of Congress, approved April 27, 1904 (33 Stat. 353), of approximately 1,082,000 acres, with the stipulation that the ceded land should be sold by the United States and the proceeds thereof paid to the Indians.

XX. During the incumbency of acting Indian Agent, James W. Watson of the Crow Agency, Montana, March 1, 1894, to December 31, 1897, certain irregularities were discovered in his agency accounts. An account was stated against him of \$55,129.46, due in part to such irregularities and in part to loss of money in bank standing to his credit, the loss being due to failure of the bank. Of the account so stated against Agent Watson \$30,932.85 was recovered and repaid to the appropriate funds, leaving a difference of \$24,196.61 which has never been recovered or repaid to funds disburseable for the Crows' benefit.

XXI. The Crow Reservation lies in an area where the rainfall alone is not sufficient to assure profitable farming and irrigation is necessary. The Crow Nation or Tribe consented to the use of tribal funds for the building and maintenance of an irrigation system, and the United States made appropriations of additional money from time to time for that purpose. The expenditures were as follows:

From Crow tribal moneys.....	\$1, 618, 213. 29
From—	
(1) Congressional appropriations reimbursable (42 Stat. 1192; 43 Stat. 402, 1153; 44 Stat. 466).....	\$274, 154. 71
Less reimbursed.....	220. 30
	<hr/>
	273, 934. 41
(2) <u>Other appropriations, non treaty</u> .....	9, 687. 97
	<hr/>
	283, 622. 38
	<hr/>
Net total disbursed.....	1, 901, 835. 67

The construction of this system followed accepted engineering practices, was beneficial to the land, and its cost was reasonable.

XXII. A tribal herd of cattle was authorized by Congress April 27, 1904 (33 Stat. 352) to be established for the Crow Tribe.

Pursuant to this authorization 9,250 head of cattle were purchased and in June, 1914, delivered at the Crow Agency at a cost of \$405,209.25. Thereafter other purchases were made, ending in 1918, of 355 bulls at a cost of \$46,150.25, and delivered to the agency.

There was a natural increase in the herd and from time to time sales of cattle were made. On June 30, 1919, there were 18,246 head of cattle. During the six months ending December 31, 1919, 3,342 were sold, the net proceeds whereof were \$308,434.32. On December 31, 1919, there were over 16,000 head of cattle in the herd. On June 30, 1920, the herd numbered 8,693 head. There were no sales made during the first half of the year 1920.

The year 1919 had been exceptionally hot and dry in Montana, grass was unusually short, and the supply of local hay was thereby depleted. The winter of 1919-1920 was unusually cold. The Government officers in charge of the herd failed to provide sufficient hay of the kind necessary for winter feeding under this unusual condition and resorted to slough grass, grown in another State, which lacked nourishment, and as a result thereof and of the extreme cold great numbers—the exact number is not shown—sickened and died. Had sufficient forage of the proper kind been fed to the cattle the casualties among them would have been materially less. Through lack of proper care of the herd during the winter season of 1919-1920, the Crow Tribe suffered a loss of at least \$200,000.

XXIII. By act approved July 2, 1864, 13 Stat. 365, Congress created the Northern Pacific Railroad Company with authority to locate, construct, and maintain a railroad from Lake Superior to Puget Sound by the most eligible route on a line north of the 45th degree of latitude, to be determined by the company. This route was located partly north of the Yellowstone River across lands included in the Crow Reservation of 1851 and outside the limits of the diminished reservation of May 7, 1868, and partly south of the river across portions of the diminished reservation.

It does not appear that plaintiff has not been duly compensated for any land within the reservation of May 7, 1868, taken in furtherance of the construction of this railroad.

XXIV. The Custer Battlefield National Cemetery was set apart out of the Crow Reservation of 1868 by Executive order of December 7, 1886, and contained 550 acres of Crow tribal lands, worth \$2,570, and 33 acres of individual lands, worth \$295. By acts of April 15 and July 3, 1930 (46 Stat. 168, 876), Congress transferred title to this area to the United States and appropriated \$3,045 in payment thereof.

XXV. During the years 1883 to 1925, inclusive, the United States expended for the support and education of children of the Crow Tribe or Nation in Indian schools maintained by the United States outside of plaintiff's reservation the aggregate sum of \$121,210.90.

XXVI. During the period July 1, 1851, to June 30, 1866, the defendant expended for the benefit of plaintiff tribe at the Upper Missouri Agency, within which the tribe was then located, a total of \$7,007.08 from appropriations other than those made pursuant to treaty or other obligation.

During the period July 1, 1866, to June 30, 1879, the defendant expended for the benefit of plaintiff tribe at various military posts and at the Crow Agency a total of \$228,677.69, from appropriations not pursuant to treaty or other obligation.

During the period July 1, 1879, to June 30, 1927, the United States, although under no obligation to do so, expended for the direct benefit of the Crow Tribe, under other than treaty appropriations, exclusive of irrigation benefits, the sum of \$1,768,485.68, a gratuitous expenditure July 1, 1851, to June 30, 1927, of \$2,004,170.45.

XXVII. From March 3, 1921, to May 10, 1926, both dates included, Congress authorized to be set apart from Crow tribal funds

for "support and civilization of Indians", specifically for the Crow Tribe, an aggregate of \$698,500. Pursuant to this appropriation there was set apart \$644,621.25 and expended for the benefit of plaintiff, \$518,520.16. The balance of \$126,101.09 has been returned to the tribal funds or remains as unexpended balances. There is no proof of misapplication of the funds so expended or set apart.

XXVIII. Defendant is entitled to set-offs for gratuities in the total sum of \$3,627,954.93, comprised of the following items:

Treaty of May 7, 1868, nonobligatory (finding XIII)-----	\$1,337,486.80
Unratified treaty of July 15, 1868 (finding XIV)-----	155,398.81
Nontreaty irrigation appropriations (finding XXI)-----	9,687.97
Education of children (finding XXV)-----	121,210.90
Other nontreaty disbursements (finding XXVI)-----	2,004,170.45
Total set-off-----	3,627,954.93

#### CONCLUSION OF LAW

Upon the foregoing special findings of fact, which are made a part of the judgment herein, the court decides, as a conclusion of law, that the plaintiff is not entitled to recover and its petition is therefore dismissed.

#### OPINION

WHALEY, *Judge*, delivered the opinion of the court:

This suit is brought by the Crow Nation or Tribe of Indians of Montana under the special jurisdictional act approved July 3, 1926 (44 Stat. 807), as set out in full in finding I. The act confers jurisdiction on the Court of Claims, with an appeal to the Supreme Court, "to hear, adjudge, and render judgment in any and all claims arising under or growing out of the treaty of Fort Laramie, dated September 17, 1851 (Second Kappler, page 594), between the United States and the Crow Indian Nation and the treaty dated May 7, 1868 (Fifteenth Statutes, page 649), between the United States and the Crow Indian Nation, or arising under or growing out of the Executive order dated July 2, 1873 (First Kappler, page 855), or any subsequent Executive order, the act of Congress approved April 15, 1874 (Eighteenth Statutes, page 28), or any subsequent act of Congress or agreement with said Crow Indian Nation, which said Crow Indian Nation or any branch thereof may have against the United States, \* \* \*; and jurisdiction is hereby conferred upon the said courts to determine whether or not any provision in any such treaty or Executive order has been violated or breached by any act or acts of Congress or by any treaty made by the United States with any other Indian tribe or nation, and if so, to render judgment for the damages resulting therefrom."

The plaintiff filed its petition in this court on June 13, 1927, seeking to recover on numerous claims, some of which have been abandoned in the brief and others are connected with and involved in the four major claims which will be considered separately.

The jurisdiction of this court is confined to claims "rising under" or "growing out" of the two treaties; the Executive order of 1873 or any subsequent Executive order, or agreement made with the Crow Indian Nation, and to determine if any provision in any such

treaties or acts of Congress has been "violated" or "breached" by "any act or acts of Congress", or if any treaty made by any other Indian Nation with the United States has violated or breached any such treaties or acts of Congress with the Crow Nation.

Treaties made prior to 1851 are not within the sphere of this act and can afford no aid in its application.

Suffice it to say, the relations of the Crow Indians and the citizens of the United States were always amicable. The Crow Scouts often assisted the Army in its operations against hostile tribes. The Government valued the friendly relations of this Indian tribe. With this brief outline we come to the merits of the case.

The first claim is that for additional consideration for 30,530,764.8 acres of land taken over by the Government under the treaty of 1868, representing the amount by which plaintiff's reservation under the Fort Laramie treaty of September 17, 1851 (11 Stat. 749), was diminished by the treaty of 1868 which reduced the reservation to 8,000,409.2 acres. The plaintiff claims a failure of consideration through a mistake of fact, as to the ratification of the treaty of 1851, causing the Crow Indians to cede this large territory for an inadequate price. The claim is made for the difference amounting to some \$30,000,000.

(a) As an alternative to this claim, should it not be allowed, the plaintiff alleges that under the 1868 treaty the River Crows, not being a party to the treaty, were deprived of their interests in the reservation granted by the treaty of 1851, that their interests represented 40% of the true value of the land, and therefore they are entitled to the sum of some \$12,000,000.

(b) There is also alleged, in the nature of a second alternative, a claim for the River Crows for the value of the alleged interests of these Indians in the lands north of the Missouri River set aside by Executive order in 1873-1875 to the Indians composing the Blackfeet Nation and the River Crows.

(2) A claim is made for the Crows for deficiencies in annuities under the treaty of September 17, 1851.

(3) A claim is made for alleged losses, due to the negligence and mismanagement of the Government, through its agents and officers, of the tribal herd of cattle.

(4) There is a claim for the loss through a bank failure and for certain tribal funds, allegedly unlawfully expended by the Indian agent, in the sum of \$24,196.61.

#### CLAIM I

The first issue raised is the most important question in this case. It appears that the Crow Nation entered into a treaty with the United States in 1851, along with other Indian nations, known as the "Fort Laramie Treaty", in which the Government set aside a reservation of some 38 million acres to the Crow Nation. The territory reserved for this Indian nation was situate in what are now the States of Montana, and Wyoming. When this treaty was submitted to the Senate, an amendment was made reducing the number of years in which the annuities were to be paid, and, as so amended, was ratified by the Senate. This treaty, as amended, was returned to the

tribes concerned and the assent in writing of all of them in due course was secured, that of the Crow Nation on September 18, 1854. Through some error in the Department, the ratification of this treaty by the Indians was never promulgated, and for a number of years the officials of the Government labored under the impression that there had been no ratification of this treaty by the Indian tribes, parties thereto; however, during the period from 1851 to 1866 and until sometime thereafter, the Congress of the United States appropriated each year the sum called for in the treaty, and the amount so appropriated was applied to and used by the Indian nations.

In the case of the *Fort Berthold Indians v. The United States*, 71 C. Cls. 308, this court decided that the treaty entered into between the United States and these Indian tribes in 1851, and known as the "Fort Laramie Treaty", was duly ratified by the Indians and was an existing and binding treaty on all parties thereto; that under this treaty the Indians received the reservation of the lands described therein and the Government recognized their right of occupancy to the lands so reserved.

In the *Fort Berthold case, supra*, the lands, set aside as a reservation under the Fort Laramie Treaty of 1851, were taken by the Government without compensation to the Indian tribe or cession by them. There has been no taking of any lands from the Crow Indians. In every instance a cession by them has been made to the Government for a consideration, and to certain railroad companies also for a consideration, with the consent and approval of the Government.

The plaintiff claims that, due to an error on the part of the Government officials in recognition of this treaty, the Indians were misled as to their rights in the lands of the treaty of Fort Laramie when they came to make the treaty of 1868, and, that under section 4 of the jurisdictional act, if the United States have "obtained lands from the Crow Indians for an inadequate consideration under mistake of fact, damages therefor shall be confined to the value of the money or their property at the time of such appropriation \* \* \*"; that the failure of recognition of the ratification of the treaty of 1851 by the Government officials was such a mistake of fact that it misled the Indians into parting with that portion of their lands given to them by the Government under the 1851 treaty and delimited by the treaty of 1868 (15 Stat. 649, 652), for a consideration much less than they would have demanded and received, had the Government recognized the ratification of the treaty of 1851 and acknowledged the rights of the Indians in the reservation set aside by this treaty. We can find no merit in this contention. The evidence does not disclose that the Indians were misled or that any fraud was committed upon them. As a matter of fact, no fraud is alleged, only a general charge that the Indians, through the actions of the officials of the Government in not promulgating the treaty of Fort Laramie as having been duly ratified by the Indians upon the amendment made by the Senate, were not acquainted with their rights under the treaty of 1851. However, during all of this period, the Indians were receiving from the Government the amounts stated in the treaty; so far as the Congress was concerned the terms of the treaty were carried out fully. During all these years the Crow

Nation lived on the reservation so set apart under the treaty, although a small band known as the River Crows wandered from the reservation and lived on the Milk River in the territory of the Upper Missouri River. This band of Crows lived most of the time off the reservation in the territory of the Blackfeet and Piegiens and other tribes on the upper Missouri River but returned to the reservation from time to time. We can find nothing in the evidence to show that the Crow Indians were at any time misled as to the nature of their holdings under the treaty of 1851, but on the contrary, the evidence shows that they considered the reservation, so set apart in this treaty, as their lands and in all of their dealings with the Government, which resulted in the treaty of 1868, those speaking for the Crow Nation referred to it as their lands.

However, under the Jurisdictional Act, this court is confined to claims arising under and growing out of the 1851 treaty and the treaty of 1868; both of these treaties set out the consideration to be paid by the Government. Under the Constitution, all treaties made under the authority of the United States are the supreme law of the land, and the question of the amount of the consideration and what entered into the negotiations are not for this court to determine. Both are political and not judicial matters.

In *United States v. Old Settlers*, 148 U. S. 427, 468, the court said:

"Unquestionably a treaty may be modified or abrogated by an act of Congress but the power to make and unmake is essentially political and not judicial, and the presumption is wholly inadmissible that Congress sought in this instance to submit the good faith of its own action or the action of the Government to judicial decision, by authorizing the stipulations in question to be overthrown upon an inquiry of the character suggested, and the act does not in the least degree justify any such inference."

It has been held repeatedly that the court cannot go behind a treaty, and that a treaty remains the supreme law of the land and that no court, either a court of law or of equity, can declare a treaty to have been procured by duress and fraud and therefore inoperative. The rights of the parties must be considered and the legal and equitable rights determined under the terms of the treaty. We can find nothing in the evidence to justify the finding that any advantage was taken of the Indians so far as the consideration was concerned, or justify the conclusion that Congress intended by the jurisdictional act to submit to this court the question of its fair dealings with these Indians.

It may be reiterated, as declaratory of the good faith of Congress, that Congress made appropriations in fulfillment of the treaty of 1851, and distributed them to the plaintiff Indians, and there is no satisfactory proof of any shortage in distribution.

Under the provisions of the treaty of 1868, the United States agreed to expend sums of money for the benefit of the Crows for various periods and for various and special purposes, the indefinite amounts to be determined by the United States from time to time as contingencies and necessities should arise. In compliance with the obligations thus assumed, Congress disbursed for the benefit of the Crows \$1,499,866.16. This amount was the consideration which

went to the Crow Nation for the cession of the 30,000,000 acres delimited from the 1851 reservation. Both from a factual and jurisdictional standpoint, there can be no recovery on this claim.

#### ALTERNATIVE CLAIM A

The next important question (claim A) which plaintiff makes is that a small tribe of the Crow Nation consisting of 40% of the population of the whole Crow Nation left the reservation and lived on the upper Missouri River and was not a party to the treaty of 1868, and, therefore, the interests of this tribe were never ceded to the United States under the treaty of 1868. We will consider this question from the position taken in the plaintiff's brief, although we do not believe it merits serious consideration. This claim is necessarily based on the title which the Indians derived under the 1851 treaty to the lands set apart as a reservation. It is well-settled law and does not require a citation of authority that the title derived by an Indian tribe, through the setting apart of a reservation, depends entirely upon the terms of the treaty which is entered into between the parties, and that, where there is simply a reservation set apart for the Indian Nation, no fee simple or base fee is granted to the tribe, but only a right of occupancy.

In *Spalding v. Chandler*, 160 U. S. 394, 402, the court said:

"It has been settled by repeated adjudications of this court that the fee of the lands in this country in the original occupation of the Indian tribes was from the time of the formation of this Government vested in the United States. The Indian title as against the United States was merely a title and right to the perpetual occupancy of the land with the privilege of using it in such mode as they saw fit until such right of occupation had been surrendered to the Government. When Indian reservations were created, either by treaty or Executive order, the Indians held the land by the same character of title, to wit, the right to possess and occupy the lands for the uses and purposes designated."

There is nothing in the treaty to show that anything but an occupancy title was vested in the Crow Nation in the reservation set aside by the 1851 treaty. It is true that a tribe of the Crow Nation roamed from the reservation and lived on the upper Missouri River but the evidence shows that they returned from time to time, either as individuals, or as a tribe to the reservation, and that when the treaty of 1868 was negotiated, one of the chiefs of the River Crows, Wolf Bow, was present, both at the first meeting in 1867 when the terms of the treaty were agreed upon, and when the treaty was signed the following spring in 1868. He signed the treaty. The treaty states that it is made by the Commissioner on the part of the United States and "the undersigned chiefs, headmen of and representing the Crow Indians, they being duly authorized to act in the premises."

Irrespective, however, of the nature of the title the Indians derived from the 1851 treaty, there is no showing that when the Congress ratified this treaty, it recognized two tribes, one known as the Mountain Crows and the other as the River Crows. The Senate subsequently refused to ratify a separate treaty with the River Crow Indians but did ratify the treaty with the Crow Tribe of Indians.

The Senate resolution ratifying the treaty referred to the "Crow Indians of Montana Territory" and the preamble of the President's proclamation of the treaty refers to the "chiefs and headmen of the Crow Tribe of Indians." 15 Stat. 649, 653. The clear import of these words is inconsistent with the assertion that only a part of the tribe was a party to the treaty. Agreements were made with the whole Crow Tribe, subsequently, which were ratified by Congress on April 11, 1882 (22 Stat. 42); July 10, 1882 (22 Stat. 157). In these agreements reference is made to the treaty of May 7, 1868; namely, that the said treaty was with the Crow Indians and uniformly throughout all of these acts of Congress, the Crow Indians are treated as a unit, not as separate tribes to be dealt with separately and both the River Crows and the Mountain Crows alike joined in these agreements, which show that by their acts the treaty of 1868 was with the Crow Nation. By 1880, the River Crows had returned to the reservation in Montana and after that year remained there. Many, if not all, of the River Crows received the annuities and benefits contained in the 1868 treaty, and the few who did not receive these benefits while absent, when they returned to the reservation, became recipients. In the entire dealings of the Congress with this Indian nation, there was never, except as hereinafter indicated, a recognition of any separation into parts or acknowledgment of any such terms as "River Crows" and "Mountain Crows." Congress invariably dealt with them as one tribe, or nation, and although they may have at times been otherwise referred to by officials, in no instance, except one, were they ever officially recognized as separate entities.

The plain intendment of this claim is for this court to say that the treaty of 1868 was made with a part of the Crow Tribe, namely, only with the Mountain Crows. The treaty names the Crow Tribe of Indians. To hold that the words "Crow Tribe of Indians" mean "Mountain Crows" would be a material alteration of the treaty which is beyond the power of the judiciary. Congress alone can make a treaty and once made the courts cannot "alter, amend, or add to any treaty, by inserting any clause, whether small or great, important or trivial"; nor can a *casus omissus* in a treaty be supplied. Congress made the treaty with the Crow Tribe of Indians and this court cannot, and has no power to, say it was with only a part of the tribe. *The Amiable Isabella*, 6 Wheat. 1, 71, 72.

#### ALTERNATIVE CLAIM B

In alternative claim B is the only instance where the Congress has recognized the River Crows as a separate tribe.

From 1851 to 1859 the entire Crow Nation lived upon the reservation as set apart in the Treaty of Fort Laramie. Commencing with the year 1859 a small band of the Crow Nation left the Crow Reservation from time to time and went to a territory on or near the Missouri River and its north tributary, the Milk River. This tribe or band from then on began to be known as the River Crows.

There was no abandonment by this tribe of River Crows of their rights and interest in the reservation as set out in the treaty of 1851 because they returned from time to time, and some of them remained.

Members of the Mountain Crows, that is, those who remained on the reservation, visited the River Crows from time to time. This small band of River Crows some time prior to 1873 joined with the Gros Ventre Indians with whom they were friendly and occupied with them a portion of the lands of the Blackfeet Nation, north of the Missouri River. The lands occupied by the River Crows were no part of the Crow Reservation but were lands belonging to other Indians and the United States. The Government did not at any time consent to this tribe leaving the Crow Reservation but endeavored by persuasion to have the whole tribe consolidated, and employed every peaceful means to induce the River Crows to remain on the reservation. This small tribe, being addicted to liquor drinking and the pleasures of fishing, persisted in remaining on the Missouri River.

In 1871 Congress declared that thereafter no Indian nation or tribe should be recognized as an independent nation, tribe, or power with whom the United States could contract by treaty (16 Stat. 544).

In 1873 the President by proclamation set apart a large area as a reservation for the Gros Ventres, Piegans, Bloods, Blackfeet, River Crows, "and such other Indians as the President may, from time to time, see fit to locate thereon." This reservation was situate north of the Missouri River and a large part of it was land set apart by treaty to the Blackfeet Nation. All of these tribes, with the exception of the River Crows, named in the Executive order, composed the Blackfeet Nation. *The Blackfeet Nation v. The United States*, No. E-427, decided December 4, 1933. The River Crows had their own reservation along with the Mountain Crows and the two tribes composed the Crow Nation; the order of 1873 and the act of Congress of 1874 gave to the River Crows only the right to reside upon the reservation, so set apart by Executive order, and did not confer upon them any definite title or particular interest in the land. It was in the nature of a tenancy by sufferance or residential title. The object and aim of it was to prevent hostilities among the tribes hunting and fishing in this territory, and to control the liquor traffic on the Missouri River. This recalcitrant tribe, which had removed from its own reservation, gave nothing as a consideration for any interest in this new reservation. In all subsequent proclamations of the President which were ratified by acts of Congress the River Crows were never recognized as having an interest in the area so set apart by this Executive order of 1873. It was simply a license or permission granted by the Government which could be withdrawn and ceased to exist when the River Crows returned to the Crow Nation Reservation. The Executive order reserves to the President the right to put other Indians on the reservation and this could not be done if a statutory title, as tenants in common, was given to these five tribes alone.

In 1879 the River Crows finally returned to their reservation and from then on remained thereon. There is nothing in the proclamation of the President and the acts of Congress ratifying the permission to reside on the reservation north of the Missouri River, to show more than a temporary residence; and the greater part of the lands so set apart as a reservation to the Gros Ventres, Piegans, Bloods, Blackfeet, River Crows, and other Indians was taken sub-

sequently for the public domain by the agreements of 1886 (24 Stat. 29, 44) and 1887 (25 Stat. 113), and ratified in 1888. The record does not disclose the exact period when the Assiniboines and Sioux Indians were placed on this reservation, but they were residing there after the River Crows had departed and when the 1886-1888 agreements were made. The agreements were made with the tribes on the reservation at the time. The designation of the territory as a "reservation" of the Gros Ventres, Piegans, Bloods, Blackfeet, and River Crows was descriptive only, and carried no title to the lands other than the right to reside thereon, and this right disappeared upon removal therefrom. On the other hand, from 1880 the River Crows, together with the Mountain Crows, as the Crow Nation, joined in several cessions of land and accepted the benefits thereof and received allotments in severalty. There is nothing in the evidence to show that this reunion was brought about by any act of force on the part of the Government. The Government was desirous of the union of the two tribes, and used moral persuasion to bring the River Crows back to their reservation, but no coercion was used. From the time the River Crows returned to the Crow Reservation, and thereafter, agreements were made with other Indian tribes as above stated, and acts of Congress passed confirming the said agreements, whereby portions of the 1873-1875 reservations were disposed of. *The Blackfeet Nation v. The United States, supra*, and *the Assiniboine Tribe of Indians v. The United States*, decided April 10, 1933, 79 C. Cls. — This shows a clear intention by Congress and the executive departments that the River Crows were to take no interest in this reservation, and their abode thereon was solely a temporary expedient in order to avoid bloodshed and to regulate the liquor traffic on the Missouri River.

It is significant that the record shows that no treaties or agreements have been made separately with a branch or tribe of the Crow Nation, and the United States has never recognized any treaty or agreement with the River Crows as a separate political entity.

During the visits of the River Crows to the Crow Reservation they participated in the annuities and drew subsistence allowances as provided in the terms of the treaty of May 7, 1868.

From 1880, when the two bands had been reunited, cessions were made out of the 1868 reservation. In 1882 Congress ratified a cession of approximately 1,559,000 acres in consideration of the annual appropriation for 25 years of \$30,000 to be expended for the benefit of the Crow Indians (22 Stat. 42). Again, in 1882 the Congress ratified the cession of 5,650 acres for the use of the Northern Pacific Railroad Company in consideration of \$25,000 (22 Stat. 157). In 1887 Congress authorized the cession to the Rocky Ford and Cook City R. R. Co. of a right of way (24 Stat. 545), and another in 1889 was authorized by Congress for the use of the Big Horn Southern Railroad Co. (25 Stat. 660). In 1891 Congress ratified the cession of over one million acres for the consideration of \$946,000 to be disbursed for the benefit of the Crows (26 Stat. 989, 1040). Another cession was ratified by Congress in 1904 of over a million acres being the northern part of the Crow Reservation with the stipulation that the ceded lands should be sold to the United States and the proceeds paid to the Indians (33 Stat. 353).

All other treaties and all other agreements made by the United States with the Crow Indians were made with the whole Crow Nation.

It is clear from what has been said above, in reference to the numerous treaties, executive orders and acts of Congress, that the uniform policy of the President and Congress was not to enlarge the land holdings of the River Crows, when they had a reservation of their own on the Yellowstone River which was much greater than their needs as is shown by the many cessions of parts of their territory made by the whole Crow Nation after the River Crows had returned to their reservation. The policy of the Government in dealing with the Indians was not to recognize more than one reservation to any one tribe or nation.

The amount of the set-offs shown in the findings so far exceeds all other claims that, even if these claims were allowed, no recovery could be had. It is therefore unnecessary to pass on them separately.

The petition is dismissed. It is so ordered.

WILLIAMS, *Judge*; LITTLETON, *Judge*; GREEN, *Judge*; and BOOTH, *Chief Justice*, Concur.

A true copy.

Test:

*Chief Clerk, Court of Claims  
of the United States.*