BEFORE THE INDIAN CLAIMS COMMISSION

THE SIOUX TRIBE OF INDIANS, ET AL.,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

Docket No. 74

Decided: April 5, 1954

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. The plaintiffs are entitled to maintain this cause of action.

2. At the time of the Louisiana Purchase in 1803, the Sioux Indians occupied, with other tribes, a large area of land situate in the territory now comprising the States of Minnesota, Iowa, South Dakota, North Dakota, Nebraska, Wyoming and Montana, and, of this area, the mountainous region now known as the Black Hills, South Dakota, was a part.

3. The discovery of gold in California in 1848 resulted in a tide of emigration, some of which passed through Wyoming and Nebraska where several of the Sioux bands of Indians and those of other tribes, lived, roamed, and hunted. As a result of this western travel a treaty was negotiated with the Sioux Indians, and other Indian tribes of the Northwest, known as the Fort Laramie Treaty of September 17, 1851, (11 Stat. 749). Article 5 of this treaty
follows:

Article 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, commencing the mouth of the White Earth River, on the Missouri River; thence in a southwesterly direction to the forks of the Platte River; thence up the north fork of the Platte River to a point known as the Red Butte, or where the road leaves the river; thence along the range of mountains known as the Black Hills, to the headwaters of Heart River; thence down Heart River to its mouth; and thence down the Missouri River to the place of beginning.

4. The discovery of gold in Montana in 1861 resulted in a further tide of white emigration through the territory occupied by the Sioux Tribe of Indians, as described in the treaty of 1851. This line of travel was northward from the California Trail, near old Fort Laramie, Wyoming, along the valley of the Powder River, to and across the Yellowstone River and westward into the gold fields of Montana. As a result of this travel, disputes and conflicts arose with the Indians over this route on account of the large number of white travelers passing along it, and, between 1861 and 1867, there were a number of military engagements between the Government and the Indians.

5. Following the so-called Powder River War of 1866 and 1867 with the Sioux Indians, a treaty was entered into between the United States and the various bands of the Sioux Indian Tribe which was concluded April 29, 1868, and was ratified February 16, 1869, and proclaimed February 24, 1869; (15 Stat. 635, 640). This treaty was
negotiated, made, and ratified pursuant to an act of Congress of July 20, 1867, (15 Stat. 17), as follows:

Sec. 1. That the President of the United States be, and he is hereby, authorized to appoint a commission to consist of three officers of the army not below the rank of brigadier general, who, together with N. G. Taylor, Commissioner of Indian Affairs, John B. Henderson, Chairman of the Committee on Indian Affairs of the Senate, S. S. Tappan, and John B. Sanborn, shall have power and authority to call together the chiefs and headmen of such bands or tribes of Indians as are now waging war against the United States or committing depredations upon the people thereof, to ascertain the alleged reasons for their acts of hostility, and in their discretion, under the direction of the President, to make and conclude with said bands or tribes such treaty stipulations, subject to the action of the Senate, as may remove all just causes of complaint on their part, and at the same time establish security for person and property along the lines of railroad now being constructed to the Pacific and other thoroughfares of travel to the western Territories, and such as will most likely insure civilization for the Indians and peace and safety for the whites.

Sec. 2. And be it further enacted, That said commissioners are required to examine and select a district or districts of country having sufficient area to receive all the Indian tribes now occupying territory east of the Rocky Mountains, not now peacefully residing on permanent reservations under treaty stipulations, to which the Government has the right of occupation or to which said commissioners can obtain the right of occupation, and in which district or districts there shall be sufficient tillable or grazing land to enable the said tribes, respectfully, to support themselves by agricultural and pastoral pursuits. Said district or districts, when so selected, and the selection approved by Congress, shall be and remain permanent homes for said Indians to be located thereon, and no person(s) not members of said tribes shall ever be permitted to enter thereon without the permission of the tribes interested, except officers and employees of the United States: Provided, That the district or districts shall be so located as not to interfere with travel on highways located by authority of the United States, nor with the route of the Northern Pacific Railroad, the Union Pacific Railroad, the Union Pacific Railroad Eastern Division, or the proposed route of the Atlantic and Pacific Railroad by the way of Albuquerque.
General Wm. T. Sherman, General Wm. S. Harney, and General C. C. Augur were designated commissioners by the President, as the three Army officers provided for in the statute.

6. In the fall of 1867, the treaty commissioners submitted a proposed treaty to a large number of the leaders and members of the Sioux Indians at Fort Laramie. The negotiations between the commissioners and the leaders and members of the various bands of the Sioux Tribe of Indians continued in the spring of 1868. Upon the insistence of the Indians certain concessions were made by the commissioners representing the United States. As a result the treaty was agreed to by the portion of the Sioux chiefs, leaders, and members of the tribe (Red Cloud and his band) at Fort Laramie on April 29, 1868, and the treaty was subsequently agreed to at various following dates by Sioux chiefs, leaders, and members of all the remaining bands of the Sioux Tribe.

The Sioux Indians who were parties to the 1868 Treaty, supra, were those Indians, or the ancestors of the Indians, who still belonged to the same bands designated in the said treaty but who are now, by reason of subsequent acts of Congress and agreements ratified by the Congress, the plaintiffs in this action.

7. The Treaty of 1868, (15 Stat. 635), made this finding as if quoted verbatim.

8. The portion of the land in controversy in this case embraced within the boundaries described in Art. 2 of the treaty of 1868 for the absolute and undisturbed use and occupation of the Indians, known as the Black Hills lands, consists of about 7,345,157 acres
lying between the 43rd and 46th standard parallels east of the 104th meridian and west of the 103rd meridian and the forks of the Cheyenne River. This land, which it is claimed was taken of misappropriated by the defendant, is designated in the petition as "Class A" land.

The other land denominated in the petition as "Class B" land, as to which additional compensation is sought, consists of 25,858,595 acres lying west of the Missouri River and included in the outer boundaries described in the Treaty of September 15, 1851, but exclusive of the area described as a Permanent Reservation by Article 2 of the treaty of 1868.

The other land denominated in the petition as "Class C", as to which additional compensation is sought, consists of 40,578,123 acres lying west and north of the irregular boundary lines established by the treaty of 1851 as the western and northern boundaries of the Sioux country. (See treaty of 1851 and treaty of 1868).

9. Prior to 1874 there had been, in 1861 and again in 1873, some public rumors and agitation with reference to the desirability of the Black Hills -- its rich land, fine timber, good climate, and abundant water supply -- for white settlements and for mining, because of its gold-bearing possibilities. Prior to and at the time the treaty of 1868 was made the Sioux Indians knew that the Black Hills contained gold, but the Government had no accurate information about the matter and, up to that time, no exploration of the area had been made. The Custer Expedition left Fort Abraham Lincoln, Dakota Territory (now North Dakota), July 2, 1874, and returned to that Fort August 22, 1874.
On this expedition gold was discovered in paying quantities in the Black Hills within the Sioux Reservation. This discovery of gold was made public in dispatches to the public prints August 27, 1874 and thereafter, whereupon a movement of white citizens soon began toward the gold region of the Black Hills and, in 1875, invaded that territory which was within the permanent reservation of the Sioux Tribe of Indians. Upon return of the Custer Expedition in 1874, the Indians of the Sioux Tribe became aware that the Black Hills contained gold in paying quantities. At that time the Black Hills area was surrounded on almost all sides by white settlements; railroads were in operation, the Union Pacific to the south and the Northern Pacific to the north of the Black Hills; and the Missouri River carried a traffic in steamboats. Thus, facilities were open to white citizens to within comparatively short distances of the Black Hills' gold fields.

10. In May 1875 it became imperative, in the opinion of the President, to bring a delegation from the Sioux Tribe to Washington for a preliminary discussion of the matter of purchase by the Government of the hunting rights on what are called Class "B" and Class "C" lands and the Black Hills section of the Sioux Reservation, and the opening of the Big Horn Mountain country for settlement and mining. Negotiations to that end were renewed by the President in June 1875 when the delegation of the Sioux Indians visited Washington to consider the matter further. This delegation consisted, among other Indians, of Red Cloud, Sitting Bull, Spotted Tail, Lone Horn, and Little Wound.

11. A council was held May 27, 1875. On that day the Secret of the Interior stated to the Indians, in part, as follows:
Now I want you to remember another thing. This treaty of 1868 set off a large tract of country for you to occupy, lying in the north part of the United States and away west.

It also provided that you might hunt in all the country north of the North Platte and east of the Big Horn Mountains.

It also provided that you might hunt on the Smoky Hill Fork of the Republican, as long as the buffalo ranged there, so as to justify the chase. This was nearly seven years ago; now the buffalo is not found on the Smoky Hill Fork of the Republican, so as to make it worth while to hunt them. The buffalo north of the North Platte have also been driven away, to such an extent, that you cannot find any large quantities there, and the white people are pressing the Government for the privilege of settling also along the Smoky Hill Fork of the Republican.

We cannot stop the white people from going out there. We cannot prevent them from anxiety to take these lands, especially when the buffalo are gone so as to render it undesirable for you to be there.

Now you see the Government has more children than you; you are the Government's children, the children of the Great Father; so are the white people; and the Great Father has to do what is best for all.

I want you to consider these things for the purpose of doing what is best for all the children of the Great Father.

12. On June 3, 1875, the President held a council with the Indian delegation with reference to the relinquishment by the Sioux Tribe and the acquisition by the Government of certain hunting rights and also the Black Hills portion of the reservation. The President stated to the Indians in part as follows:

In regard to the Black Hills, I look upon it as very important to them (the Indians) to make some treaty by which, if gold is discovered in large quantities, the white people will be allowed to go there, and they receive a full equivalent for all that is rendered.

If gold is not found there in large quantities, of course the white people won't for the present want to go there, and
their country will be left as it is now.

The Secretary of the Interior, and the Commissioner of Indian Affairs, will explain to them hereafter, about what would be probably a fair equivalent to the white people and to them which should be given in case they should surrender the Black Hills, or the portion in which gold may be found. As I pointed out to you before, there will be trouble in keeping white people from going there for gold, if it should be discovered **it is possible that strong efforts might not be made to keep them out.

My interest is in seeing you protected, while I have the power to make treaties with you which shall protect you. After you go back to your homes and have been there a sufficient time to talk pretty generally with your people, if I get such a word from you as to make it seem desirable, I will appoint commissioners to go out to confer with you. But it is important to you that while you are here, you settle the question of the limits of your hunting grounds, and make preliminary arrangements to allow white persons to go into the Black Hills. If it should come to the purchase of the Black Hills or a portion of that country from you I would try to see you get a full equivalent in value, and that that money be paid out in U. S. bonds deposited here, so that the interest would be drawn twice a year for your benefit, and be expended for your benefit each year as might be agreed upon, and I look upon it as very important to you, and your children, the Indians who come after you, that you encourage all you can, the children attending schools, in speaking English and preparing yourselves for the life of white men.

SECRETARY. The agreement for the relinquishment of the hunting privileges in Nebraska has been drawn up ready for you to sign.

THE PRESIDENT. That agreement has been shown to me and I approve of it and would be glad to have you sign it. I will say again whenever the Secretary of the Interior and the Commissioner of Indian Affairs talk to you they talk for me, and if there is any point they cannot quite agree upon they will submit the views of the Indians and their own views to me to decide between them.

One word more that has nothing to do with this -- I have always felt, ever since I was a young officer of the Army, a great interest in the welfare of the Indians. I know that formerly they have been abused and their rights not properly respected. Since it has been in my power to have any control over Indian affairs I have endeavored to adopt a policy which should be for your future good, and calculated to preserve peace between the whites and Indians for the present; and it is
my great desire, now while I can retain some control over the matter, that the initiatory steps should be taken to secure you and your children hereafter. If you will co-operate with me I shall look always to what I believe is for your best interests. Many of the Indians who accepted at an early day what we proposed to you today are now living in houses, have fences around their farms; have school houses, and their children are reading and writing as we do here. ** *

Where there is a population of industrious people who understand how to work, they cannot let their population be pent up and be destroyed while there is territory where they can go and get a subsistence. And what I want to do is to prepare the Indian for a contingency that will be sure to arise, so that he will be able to live upon the ground and get a support from it. The same as white people. This question that he (Red Cloud) is discussing, is one of sentiment, but it will have to give way before the growth of numbers who are not going to starve, merely out of a sentimental consideration of a title that others may have.

In all this matter, and in all my dealings with the Indians, as I have explained frequently, and once or twice today, I am looking more to their interests than to ours; and I am very anxious that the Government of the United States should pay them in a way that will be of most benefit to them, a full equivalent for all that they have given up, and this is the only way I see a chance of their having in the future a fair equivalent of what they surrender.

You may say to Red Cloud, in answer to what he stated a little while ago, that he did not like to have money collected for what is his, that what we are doing, is paying money which is not his, for buffalo which he claims, but which he has not the right to.

13. This commission held councils with the leaders and members of the Sioux Tribe in their country, but was unable to arrive at any terms with the Indians for the relinquishment or sale of the Black Hills. The efforts of the commission to secure the results desired by the Government were fruitless, and, on June 29, 1875, the commission submitted to the Indians their final propositions:
(1) To purchase the license to mine and, also as incidental thereto, the right to grow stock and to cultivate the soil in the country known as the Black Hills, beginning at the junction of the North and South Forks of the Cheyenne River and embracing all the territory between said rivers lying west of said junction to the one hundred and fourth meridian of longitude west from Greenwich, the United States agreeing to pay therefor the sum of $400,000 per annum; the United States reserving the right to terminate said license at any time by giving two years' notice by proclamation, and payment of the full amount stipulated for the time the license may continue; and at the expiration of said term, all private property remaining upon said territory shall revert to the Sioux Nation; and such an amount of said $400,000 as the Congress shall determine, not less than $100,000 annually, shall be expended for objects beneficial for their civilization, and the remainder of said annual sum shall in like manner be expended for their subsistence; or, if the Sioux Nation prefers it:

(2) To purchase the Black Hills, as above described, from the Sioux Nation and to pay them for their interest therein the sum of $6,000,000 in fifteen equal annual installments; the said sums to be annually appropriated for their subsistence and civilization, not less than $100,000 of which shall be annually expended for purposes of civilization.

(3) The commissioners further proposed to the Indians to purchase all that portion of what was known as the Big Horn country Wyoming lying west of a line beginning at the northwest corner of the
State of Nebraska and running in a northwesterly direction to the Yellowstone River where the one hundred and seventh meridian west of Greenwich crosses said river, and to pay the Indians for their interest therein the sum of $50,000 annually for ten years, amounting to $500,000, to be paid in cows and other livestock, and in such implements of husbandry as should be convenient to stockgrowing and as may be deemed advisable by the President.

The Indians refused to consider the question of cession of that portion of Wyoming known as the Big Horn country on the ground that it was valuable to them to roam over and hunt upon and would not consent to surrender it. The commission, having serious doubts whether there was gold in the Black Hills in sufficient quantity to make mining profitable, submitted the above-mentioned Black Hills proposition in the alternative. The Indians refused the offer. The Commission so reported to the President.

14. Theretofore, on March 27, 1875, by direction of the President, Walter P. Jenney, mining engineer, was instructed and authorized to make a survey of the Black Hills and report on the mineral, the timber, and the agricultural resources thereof. On November 8, 1875, he submitted a report as follows:

Sir: In compliance with your request for preliminary statements respecting the mineral and agricultural resources of the Black Hills in Dakota, and the work done under my direction during the past summer in exploring and mapping that portion of the Territory, I have the honor to make the following report in brief: ***

Without entering into details regarding the manner of working or of incidents in the history of the expedition; how on reaching the hills, I found miners prospecting
on French Creek; how after a month's work gold was found in paying quantities on Spring and Rapid Creeks; how the miners poured by hundreds into the hills, and accompanying me, gave me great assistance in prospecting the country; I will briefly state such results of the work as will tend to throw light on the probable future value of the region.

That portion of the Black Hills which may be designated as Harney's Peak gold field is almost wholly in Dakota and extends about fifty miles north and south with an average breadth of nearly fifty miles north and south with an average breadth of nearly twenty miles, covering an area of not less than eight hundred square miles. The valuable gold-deposits, however, are found in the valleys of the streams which drain that area, the gold being derived from the disintegration of the quartz-ledges, which are very numerous in the rocks of that region.

The most extensive and valuable deposits of auriferous gravel discovered during the past season were in the valleys of Spring and Rapid Creeks and their tributaries, where, in almost every case, the gravel-bars are very advantageously situated for working, and where many natural circumstances contribute materially to the profitable extracting of the gold which they contain.

Timber of suitable size and quantity for the construction of flumes and sluices is abundant; the water supply is, in most localities, ample, and the fall of the streams sufficiently great to enable the water to be readily carried above the level of even the more elevated bars and deposits of gravel.

While as yet there have been discovered in the Black Hills no deposits of gravel sufficiently rich in gold to be profitably worked in the primitive manner with pan or rocker, yet there are many bars in the Harney's Peak field, especially upon Spring Creek, the forks of Castle and Rapid Creeks, and the valleys of those mountain streams, which, when skillfully worked by gangs of miners with sluices, will yield a good return for the labor employed and the moderate capital required to be invested. But little could be done in a single season in prospecting the numerous segregated quartz veins of this region, some of which undoubtedly contain gold. I have procured abundant samples for testing their value by assay.

The Bear Lodge gold field, situated in the extreme northwestern portion of the hills, is wholly in Wyoming, and entire separated from the Harney Peak region. It does not exceed
The gold deposits are small compared with those on Rapid Creek, and are remarkable for the absence of quartz in the gravel, the gold being derived from the disintegrations of feldspar porphyry, carrying irregular masses of iron and manganese ore.

It is difficult to determine the agricultural resources or climate of the Black Hills by the observation of a single season, especially as I could gain but little information respecting the severity of the winters or the prevalence of early and late frosts. The Black Hills rise like an island from an ocean of grass covered and treeless plains, watered by occasional and scanty supplies of rain; and the winds in passing over these plains gather some moisture which they part with as rain on being chilled by contact with the colder and more elevated region of the central portions of the hills. The result of this is the prevalence of frequent though not heavy rain-falls, giving to the hills a most peculiar climate. There is scarcely a day from May to August without one or two showers, yet, owing to the dryness of the atmosphere, the climate was found to be very healthy. During the past season, after August 1., very little rain was experienced, and some of the smaller streams contained water only in pools. That this remarkable rain-fall, in a region where the average fall does not exceed ten inches for the whole year, was not the exhibition of a peculiarly wet season, I can only judge by observation on the growth of the plants and trees.

The abundance of trees and the coarseness of their grains, as well as the growth of plants on dry hillsides exposed to both sun and wind, tend to show that the season which I witnessed was by no means a very unusual one, though the amount of rain may have been somewhat greater than usual.

The area of land suitable for cultivation is, from the mountainous character of the region, limited as compared with the vast area embraced in the hills, but the soil along the streams and in most of the valleys is deep and fertile, and will be sufficient for the requirements of the population which the hills will support as a stock-raising community. I should judge from the observations which I have had the opportunity to make that at least one-twentieth of the three thousand square miles embraced in the Black Hills may be fairly described as arable lands, and that among these lands lying near the streams and continuous through the hilly country are large tracts of land forming the slopes of the hillsides which, while not arable, will afford fine grazing, thus largely enhancing the value of the lands to which they are contiguous.
Among the rocky areas of the Harney's Peak range, and in the northern portion of the hills, there are regions where the grasses are comparatively wanting, but generally, throughout the whole area of the hills a luxuriant growth of the finest grasses is to be found, even covering the ground under the shade of the pine trees upon the elevated divides between the streams.

The abundance of fine quality of the grasses and the shelter afforded to stock by the densely timbered slopes and deep valleys will make it a region well adapted to stock-raising purposes.

The timber of the hills is a variety of pine known as yellow or heavy pine; the grain of the wood is straight, rather course, splitting readily, and where the trees have escaped the action of fires and violent gales, good straight logs, free from knots, and from 40 to 60 feet in length, and from 12 to 24 inches in diameter, can be obtained in abundance. Spruce of good quality is found among the canons in the Interior, and white birch, oak, and elm, of medium size, among the hills on the eastern slope.

The water throughout the hills is excellent in quality, mostly derived from springs among the limestone, or the granitic or schistose rock; only in localities among the foot-hills is it contaminated by alkali.

15. In his annual report for the year 1875 to the Secretary of the Interior, the Commissioner of Indian Affairs, on pages 7, 8 and 9 of the report said:

The public excitement mentioned in my last report, occasioned by the discovery of gold in that portion of the Sioux reservation known as the Black Hills country, increased to such a degree in the opening of the spring season as to require action looking toward the purchase of this country from the Sioux proprietors and the opening up of the Big Horn Mountain country for settlement and mining. For this purpose, as well as for completing the negotiations for the relinquishment by the Sioux of their hunting rights in Nebraska and Kansas, a large delegation of this tribe, composed of representatives from those agencies, was brought to Washington in May last for an interview with the President. It was not expected that this interview would conclude the purchase, but that it would prove a preliminary step by which the Sioux tribe would become acquainted with the wishes of the Government and its purpose relative to their own necessities and interests. Accordingly, at the request of the delegation, the President sent a commission, of which Hon. W. B.
Allison, of the United States, was made chairman, to negotiate at a general council of the tribe in their own country. The commission has not yet submitted its report, but I am informed that the negotiations have failed on account of a wide disagreement as to the value of the rights to be relinquished by the Sioux. Meanwhile, notwithstanding the stringent prohibitory orders by the military authorities, and in the face of the large military force which has been on duty in and around the Hills during the summer, probably not less than a thousand miners, with the number rapidly increasing, have made their way into the Sioux country. A mining association has been organized, laws and regulations have been adopted for mutual protection, and individual claims staked out, in the right to which they expect hereafter either to be protected by the Government or to protect themselves.

In this serious complication there seems to be but one alternative for the Government; either to so increase the military force and adopt such summary means as will insure a strict observance of the treaty-rights of the Sioux by preventing all intrusion, or to renew the effort of negotiation. However unwilling we may be to confess it, the experience of the past summer proves either the inefficiency of the large military force under the command of such officers as Generals Sheridan, Terry, and Crook, or the utter impracticability of keeping Americans out of a country where gold is known to exist by any fear or orders of United States cavalry, or by any consideration of the rights of others.

The occupation and possession of the Black Hills by white men seems now inevitable, but no reason exists for making this inevitability an occasion of wrong or lasting injury to the Sioux. If an Indian can be possessed of rights of country, either natural or acquired, this country belongs for occupation to the Sioux; and if they were an independent, self supporting people, able to claim that hereafter the United States Government should leave them entirely alone, in yearly receipt of such annuities only as the treaty of 1868 guarantees, they would be in a position to demand to be left in undisputed possession of their country, and the moral sense of mankind would sustain the demand; but unfortunately the facts are otherwise. They are not now capable of self-support; they are absolute pensioners of the Government in the sum of a million and a quarter of dollars annually above all amounts specified in treaty-stipulations. A failure to receive Government rations for a single season would reduce them to starvation. They cannot, therefore, demand to be left alone, and the Government, granting the large help which the Sioux are obliged to ask, is entitled to ask something of them in return. On this basis of mutual benefit the purchase of the Black Hills should proceed. If, therefore, all attempts at
negotiation have failed on the plan of going first to the Indians, I would respectfully recommend that legislation be now sought from Congress, offering a fair and full equivalent for the country lying between the North and South Forks of the Cheyenne River, in Dakota, a portion of which equivalent should be made to take the place of the free rations now granted.

In order to provide for the question of a fair equivalent for this country, by direction of the President, a topographical and geological survey of the Black Hills was ordered, the preliminary report of which, by Walter P. Jenney, mining engineer in charge, will be found herewith. It furnishes many interesting and important facts respecting a region hitherto almost unknown. Professor Jenney and his assistants are entitled to large credit for the conscientious diligence and thoroughness, which are apparent at every point in their work. The aid rendered by the War Department, by the courtesy of the General of the Army, and by Col. R. I. Dodge, commanding the escort, has been invaluable to the success of the survey. Without such aid, no satisfactory results could have been obtained, on account of the limited funds available for this purpose. The report confirms, in a large degree, the statements of travelers and explorers and the reports of General Custer's military expedition of last year, and shows a gold-field with an area of eight hundred square miles, and around this gold region, principally to the north, an additional area within the Black Hills country of three thousand square miles of arable lands, and this latter embracing along its streams an area equal to two hundred square miles finely adapted to agriculture, while the hill sides and elevations contiguous thereto are equally adapted to purposes of grazing, making the whole area of three thousand square miles of timber, grazing, and arable lands of great value for agricultural purposes.

According to the findings of this report, if there were no gold in this country to attract the white man, and the Indians could be left to undisturbed occupation of the Black Hills, this region, naturally suited to agriculture and herding, is the one of all others within the boundaries of the Sioux reservation best adapted to their immediate and paramount necessities. I doubt whether any land now remaining in the possession of the General Government offers equal advantages; but it will be found impracticable to utilize the country for the Sioux. So long as gold exists in the same region, the agricultural country surrounding the gold-fields will be largely required to support the miners, and to attempt to bring the wild Sioux into proximity to the settlers and miners would be to invite provocations and bloody hostility.
These facts respecting the country which the Sioux seem about to be compelled to surrender, for the sake of promoting the mining and agricultural interests of white men, have an important bearing upon the question of compensation which shall be allowed for their lands; for it must be borne in mind that unless the Sioux Nation becomes extinct, of which there is no probability, the time is close upon them when they must have just such an opportunity for self-support as that which is now known to be offered in the Black Hills; and if, for the want of another such country, they are obliged to begin civilization under increased disabilities, humanity as well as equity demands that such disability shall be compensated by increased aid from the Government; and to avoid the perils of future legislation, or want of legislation, the compensation should be provided for and fixed at the time when we are taking away their valuable lands.

The fact that these Indians are making but little if any use of the Black Hills has no bearing upon the question of what is a fair equivalent for the surrender of these rare facilities for farming and grazing. They are children, utterly unable to comprehend their own great necessities just ahead; they cannot, therefore, see that the country which now only furnishes them lodge-poles and a few antelope has abundant resources for their future wants, when they shall cease to be barbarous pensioners upon the Government and begin to provide for their own living. Their ignorance of themselves and of true values makes the stronger appeal to our sense of what is right and fair.

The true equivalent to be offered the Sioux, as helpless wards of the Government, for the Black Hills will be found by estimating what eight hundred square miles of gold fields are worth to us, and what three thousand square miles of timber, agricultural, and grazing lands are worth to them.

16. In December 1875 the President, in his annual message to Congress, recommended that, because of an anticipated large increase in emigration to the Black Hills, the Congress should "adopt some measures to relieve the embarrassment growing out of the causes mentioned."

And, in this message, the President stated in part as follows:
The discovery of gold in the Black Hills, a portion of the Sioux Reservation, has had the effect to induce a large emigration of miners to that point. Thus far the efforts to protect the treaty rights of the Indians in that section have been successful, but the next year will certainly witness a large increase of such emigration. The negotiations for the relinquishment of the gold fields having failed, it will be necessary for Congress to adopt some measures to relieve the embarrassment growing out of the causes named. The secretary of the interior suggests that the supplies now appropriated for the sustenance of that people being no longer obligatory under the treaty of 1868, but simply a gratuity, may be issued or withheld at his discretion.

17. The Secretary of Interior in his annual report to Congress for 1875 stated as follows:

The failure of the negotiations by the commissioners necessitates the adoption of some measures to relieve the department of the great embarrassment resulting from the evident determination of a large number of citizens to enter upon that portion of the Sioux Reservation to obtain the precious metals which the official report of the geologist sent out by the Government shows to exist therein. The very measures now taken by the Government to prevent the influx of miners into the Black Hills, by means of the display of military force, operate as the surest safeguard of the miners against the attacks of Indians. The army expels the miners and, while doing so, protects them from Indians. The miners return as soon as the military surveillance is withdrawn, and the same steps are taken again and again. Some of the miners have brought suits against the military officers for false imprisonment, and much embarrassment to both army and the interior department is the result. The preliminary report of Professor Jenney, which accompanies the report of the Indian commissioner, in regard to the geological and agricultural wealth of the Black Hills, indicates clearly the great temptation held out to miners and emigrants to occupy that country, and will greatly enhance the difficulties which have already surrounded the question of protecting the Sioux in their treaty rights in that territory. The opening of the next summer season will undoubtedly witness a great increase of emigration thither, and the question urges itself upon the attention of the department and of Congress for early solution. It is true that the Indians occupy that reservation under the provisions of a treaty with the United States. It is also true, as a general proposition, that treaties should be maintained inviolate, and the Indians protected in their
rights thereunder. But for two years the Government has been appropriating about one million two hundred and sixty thousand dollars for the subsistence of Sioux of various tribes, which amount is a gratuity that the Government is under no obligations to give them, and for which it receives no compensating advantage. The amount thus appropriated is 5 percent per annum of $25,000,000, which the Government is giving without an equivalent. This amount must be given them for some years to come, or they will starve. It is submitted, therefore, under these circumstances, for the consideration of Congress, whether it would not be justifiable and proper to make future appropriations for supplies to this people, contingent on the relinquishment of the gold fields in the Black Hills and the right-of-way thereto.

18. The treaty of 1868, as its provisions show, contemplated that the Indians, with the assistance agreed to be rendered by the Government, would soon become self-supporting on the reservation. The United States agreed in that treaty to equip them for farming and to furnish them all needed facilities and assistance in that connection, to furnish them educational facilities for not less than 20 years, and for a period of 30 years to furnish each Indian with articles of clothing, etc., and to pay the sum of ten dollars for each Indian "while such persons roam and hunt," and twenty dollars "for each person who engages in farming" to be used for the purchase of such articles as from time to time the conditions and necessities of the Indians might indicate to be proper. In addition to all the other provisions of the treaty, the United States agreed, in article 10, to appropriate and expend annually such sum as might be necessary for the subsistence of the Indians of the Sioux Tribe on the reservation for a period of four years. This last-mentioned provision of the treaty was fulfilled and finally discharged by the appropriation and disbursement of $1,314,000 under the act of February 14, 1873 (17 Stat. 437, 456), for the fiscal year ending
June 30, 1874. The total appropriated in fulfillment of the subsistence provisions under the treaty was $5,295,761.91. The Sioux Indians had not become self-sustaining and, notwithstanding there no longer remained any treaty obligation on the part of the Government to support the Indians, the Congress continued to appropriate and disburse public funds for their sustenance.

The act of June 22, 1874, (18 Stat. 146, 167), making appropriations for the year ending June 30, 1875, appropriated $1,100,000 for subsistence of the Indians of the tribe then numbering more than 30,000 persons. Likewise, under the act of March 3, 1875, (18 Stat. 420, 441), $1,100,000 was appropriated and disbursed for sustenance for the fiscal year ending June 30, 1876; and under act of April 6, 1876, (19 Stat. 28), a deficiency appropriation of $150,000 was made and disbursed for subsistence of the Sioux Indians for the fiscal year ending June 30, 1876. The total of these last-mentioned appropriations for food for the necessary subsistence of the Indians of the Sioux Tribe was $2,350,000.

In the act of August 15, 1876, (19 Stat. 176, p. 192), making appropriations for the current contingent expenses of the Indian Department for the fiscal year ending June 30, 1877, Congress made the necessary appropriations for fulfilling all the existing provisions of the Sioux Treaty of 1868, and with reference to the matter of subsistence of the Indians of the Sioux Tribe, appropriated the further sum of $1,100,000, and with respect thereto, enacted as follows:
For this amount, for subsistence, including the Yankton Sioux and Poncas, and for purposes of their civilization, one million dollars: Provided, That none of said sums appropriated for said Sioux Indians shall be paid to any band thereof while said band is engaged in hostilities against the white people; and hereafter there shall be no appropriation made for the subsistence of said Indians, unless they shall first agree to relinquish all right and claim to any country outside the boundaries of the permanent reservation established by the treaty of eighteen hundred and sixty-eight for said Indians; and also so much of their said permanent reservation as lies west of the one hundred and third meridian of longitude and shall also grant right-of-way over said reservation to the country thus ceded for wagon or other roads, from convenient and accessible points on the Missouri River, in all not more than three in number; and unless they will receive all such supplies herein provided for, and provided for by said treaty of eighteen hundred and sixty-eight, at such points and places on their said reservation, and in the vicinity of the Missouri River, as the President may designate; and the further sum of twenty thousand dollars is hereby appropriated to be expended under the direction of the President of the United States for the purpose of carrying into effect the foregoing provision: And provided also, That no further appropriation for said Sioux Indians for subsistence shall hereafter be made until some stipulation, agreement, or arrangement shall have been entered into by said Indians with the President of the United States, which is calculated and designed to enable said Indians to become self-supporting.

19. August 24, 1876, the President appointed another commission to negotiate with the Sioux Tribe for the desired cessions and stipulations as provided in the act of 1876, supra. This commission proceeded to the Sioux country to conduct negotiations with the Sioux tribes and bands at the different agencies on the Great Sioux Reservation and submitted to them a proposed agreement conforming to provisions of the act of Congress; it duly explained to the Indians the intent, meaning, and effect of the act of Congress and the proposed agreement, in connection with the fact that the subsistence provisions
of article 10 of the treaty of 1868 had long since been fulfilled and had become extinguished, and further stated to the Indians that there no longer rested upon the Government any obligation to appropriate and disburse large sums annually for their subsistence. The result was that the commission was unable to obtain the assent of three-fourth of the male adult Indians of the tribe to this proposed agreement. More than 90 percent of the Indians refused to assent. The chiefs, headmen, and less than ten percent of the male adult Indians of the tribe at the different agencies assented to and signed the agreement on dates ranging from September 20 to October 27, 1876.

The record of the negotiations of the commission with the Indians of the Sioux Tribe discloses and shows that it was impossible for the commission to arrive at an agreement in strict conformity with article 12 of the treaty of 1868 for the relinquishment or sale to the Government of the Black Hills for the reason that more than 90 percent of the Indians refused to sell or lease the Black Hills and relinquish their hunting rights to the Government at any price. The male adult members of the tribe over eighteen years of age constituted about 25 percent of the entire population of the tribe. Some of the Indians indicated a willingness to lease the mining rights in the Black Hills to the Government for a consideration of $70,000,000 or for full subsistence for every Sioux Indian (then numbered between 20,000 and 30,000 persons) from that date, so long as the tribe existed.

The record, as a whole, does not justify a finding that the chiefs, headmen, or the Indians of the Sioux Tribe who assented to
and signed the agreement, which became the act of February 28, 1877, hereinafter mentioned, did so under duress, or that the commission used undue influence or imposed upon the Indians who did sign the agreement.

20. The agreement as thus consummated, which so far as the assent of the tribe was concerned was the best the Government could do in the circumstances, was, in due course, submitted by the commission, with its journal and minutes, to the President and by him transmitted to Congress on December 22, 1876 (Sen. Exec. Doc. 9, 44th Congress, 2d sess., Cong. Doc. Series 1718), with the statement that "I ask your especial consideration of these Articles of Agreement as among other advantages to be gained by them is the clear right of citizens to go into a country of which they have taken possession and from which they cannot be excluded." In due course Congress made the agreement so transmitted a part of the act approved February 28, 1877, (19 Stat. 254). (The entire Act of February 28, 1877, (19 Stat. 254), is made a part hereof as if quoted verbatim).

21. Thereupon, the $1,100,000 conditionally appropriated by Congress in the act of August 15, 1876, supra, for subsistence of the Indians for the fiscal year ending June 30, 1877, was expended and disbursed for that purpose, and Congress has, annually, ever since that time appropriated and is still appropriating so far as is necessary, in conformity with and in fulfillment of the provisions and stipulations of the act of February 28, 1877, as embodied in article 5, the sums necessary for subsistence of each individual of the Sioux Tribe.
By article 5 of that act, the Government assumed an obligation to continue to appropriate and expend such sums as should be necessary for such subsistence "until the Indians are able to support themselves" in return for the Black Hills and hunting rights acquired, and, also added approximately 917,000 acres of grazing land to the permanent reservation. The total of the sums annually appropriated by the Congress to June 30, 1926, in fulfillment of this purpose, for subsistence of the Indians of the Sioux Tribe, including the $3,055,450.5 for the fiscal years 1875 and 1876, was $39,993,962.50, for none of which any legal obligation rested upon the Government other than that assumed and provided for in the Act of February 28, 1877. Amounts appropriated for subsistence subsequent to 1926 bring this total to approximately $43,000,000.

Plaintiffs admit appropriations by the defendant under the Act of 1877 to January 1, 1953 (partially estimated), in the amount of $54,048,106. (Pltffs' Intermediate Brief, p. 9).

Plaintiffs assert production of gold and silver and timber (partially estimated) to December 31, 1952, in the amount of $696,120,082. They assert loss of royalties on same of $87,015,010. They also assert loss of land rentals (estimated) in the amount of $31,897,799.

The total of royalties and rentals which plaintiffs claim they would and should have received from January 1, 1877, to January 1, 195 is $118,912,809. (Pltffs' Intermediate Brief, p. 8).
22. It is not established by the evidence:

(1) That the defendant profited in money from the gold and silver mined from the property involved.

(2) That the defendant Government at any time between 1877 and 1953 received a royalty or any other money return from gold or silver extracted from Government-owned lands.

(3) That any royalty was received by private owners of gold and silver producing lands from the gold and silver extracted from their lands.

(4) What expense was involved in the extracting of gold and silver from the property in question at the time involved.

(5) That to have gambled in 1877 on the prospective value of the mineral deposits would be as safe a provision for the future subsistence of the plaintiffs as the consideration provided for them by the Act of Congress of 1877 complained of.

23. In the circumstances and under the conditions existing as of date February 28, 1877, the said Act of Congress of that date provided adequate compensation for the lands and rights acquired by said Act from the plaintiff Indians, and said Indians were treated fairly and honorably by said Act.