

BEFORE THE INDIAN CLAIMS COMMISSION

THE CROW TRIBE OF INDIANS,)
)
 Petitioner,)
)
 v.)
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)

Docket No. 54

Decided: June 11, 1954

FINDINGS OF FACTEXPLANATORY STATEMENT

The petitioner, the Crow Tribe of Indians, by petition filed herein within the time fixed by law, seeks recovery for the value of 30,530,764.8 acres of land, hereinafter described, located in what is now the State of Montana, less proper offsets. It is alleged in the petition that by the treaty of September 17, 1851, 11 Stat. 749, between petitioner and defendant, known as the Fort Laramie Treaty, the latter acknowledged, ratified and confirmed petitioner's ownership, right of occupancy, possession and use of said land.

In its answer to the petition, defendant has pleaded, among others, the following three affirmative defenses, in substance as follows:

Second Defense.—That the Fort Laramie Treaty, dated September 17, 1851, 11 Stat. 749, 2 Kapp. 594, is solely a treaty of amity, and that under it the Crows acquired no compensable estate in the lands described:

Third Defense.—That the issues alleged in the petition are res judicata by virtue of the prior decision rendered in Crow Nation v. United States, Case No. H-243, reported in 81 C. Cls. 238;

Fourth Defense.--That the Commission has no jurisdiction by virtue of Section 4 of the Act approved July 3, 1926, 44 Stat. 807, which provided:

* * * 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 claims, right, and title of the said Crow Indians in and to such money or other property.

And by stipulation of the parties, filed herein and approved by the Commission on March 13, 1953, the parties agreed, insofar as essential here:

1. That the initial hearing before the Commission be limited to the issues presented by the defendant's three legal defenses. (The defenses set forth above).

* * *

4. The defendant hereby stipulates that the Fort Laramie Treaty, dated September 17, 1851, was duly executed by the parties and ratified by the Senate.

In addition to the above statement the Commission makes the following findings of fact:

1. The petitioner is an Indian tribe and has authority to maintain this claim under the provisions of the Indian Claims Commission Act of August 13, 1946, 60 Stat. 1049.

2. On September 17, 1851, defendant and several Indian tribes or nations, including petitioner, concluded a treaty by which a certain tract of land was therein designated as petitioner's territory; that said treaty, insofar as applicable here reads:

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 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 head-waters of Big Dry Creek, and thence to its mouth.

* * *

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 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.

3. By Article 2 of the treaty between petitioner and defendant concluded on May 7, 1868, 15 Stat. 649, there were set apart from the territory described in Finding 2 hereof for the "absolute and undisturbed use and occupation" of petitioner the following lands:

Commencing where the 107th degree of longitude west of Greenwich crosses the south boundary of Montana Territory; thence north along said 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; thence east along said parallel of latitude to the place of beginning.

The area thus described comprised 8,000,409.2 acres, leaving 30,530,764.8 acres remaining of the land designated in the 1851 treaty as the territory of the petitioner, that being the land involved in this cause.

And by the same Article 2, the petitioners relinquished their rights to their lands designated in the Fort Laramie Treaty (Art. 5) and described in Finding 2 by the following language:

"* * 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 as is embraced within the limits aforesaid."

The limits last referred to being the reservation of 8,000,409.2 acres described above.

4. At the time the Fort Laramie Treaty was entered into the petitioner Indians were a primitive, uncivilized people with no adequate knowledge of the English language and unskilled and inexperienced in conducting treaty negotiations.

5. At the time that the treaty of 1851 was negotiated and entered into all of the lands involved in and described in the treaty were by the United States recognized generally to be lands held and occupied by Indians from time immemorial, held by them by aboriginal Indian title.

6. Immediately and for some years preceding the treaty of Fort Laramie, because of the discovery of gold on the Pacific Coast, gold-

seekers, emigrants and troops found it necessary to pass through this Indian country, the Indians bitterly resented their invasion and intrusion because the whites destroyed and depleted buffalo and game, the native grasses and forests, and threatened the livelihood and traditional means of subsistence of the Indians, bringing disease among them and causing starvation, suffering and great loss of life among the Indians. The hostility thus aroused manifested itself in the killing and massacre of the whites passing through the country, serving as a constant threat and hazard to any white people passing into or through said country. The Indian tribes or nations involved also fought among themselves, mostly on account of boundary disputes, the more warlike particularly preying upon and invading the territories of other tribes; these said internecine wars imperiling the whites who entered the country. (Ex. 3-A and 39).

7. The Indian nations and tribes, parties to said treaty, considered themselves entitled to compensation for the right-of-way of white travelers through their country and for the resulting destruction of game, grass and timber committed by troops and emigrants. (Ex. 39).

8. The purpose and intent of the United States Government in seeking a treaty with the Indian nations and tribes here involved was to bring about peaceful relations among the Indian tribes themselves and stop internecine wars and to have the tribes agree among themselves, with respect to the vast territory recognized as generally held by all of them by Indian title, to an exact definition of the national domain of each tribe and the establishment of fixed boundaries to that end, and

to obtain from each tribe affected a right of way through their country for the peaceful passage of emigrants and troops; and otherwise to placate the Indians, satisfy their complaints and obtain agreement to avoid future depredations. (Ex. 3-A, 39, 40).

9. The Government agents who negotiated the treaty with the Indians and who signed it for the United States as Commissioners understood the purpose and intent of the Government, as outlined in the previous finding, and in their extended negotiations with the Indian tribes at Fort Laramie, leading up to the execution of the treaty, so represented to the Indians, and the Indians so understood. (Exs. 25a, b, c, d and f).

10. By the treaty of Fort Laramie, the United States Government accomplished the purpose for which the appropriation of Congress was made and to which it desired the assent of the Indian tribes affected, whereby, for the consideration named, the United States obtained the right of passage through the territory and the promise from the Indians that they would keep the peace. The recognition that these lands were the lands of the Indian tribes affected, theretofore held in exclusive occupancy (except as invaded by whites) by these Indian tribes, was implicit throughout treaty and was understood by all of the negotiating parties. (Exs. 6, 41).

11. At all times after the treaty of Fort Laramie until the treaty of 1868 which served to cede the thirty million acres of Fort Laramie lands, the United States consistently recognized the title of the Crow tribe to the lands described in the treaty as Crow tribal lands.

12. The Treaty of Fort Laramie is not merely a treaty of amity and an agreement between the Indian tribes themselves, but by said treaty and the manner of its negotiation and the acts and conduct of the defendant, the United States of America, immediately before and after the execution and ratification of said treaty, defendant accepted, acknowledged, ratified and confirmed petitioner's aboriginal Indian title and right of occupancy, possession and use of the territory described in Finding 2.

Louis J. O'Marr
Associate Commissioner

Wm. M. Holt
Associate Commissioner