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INDIAN DEPREDAATION CLAIMS.

JANUARY 26, 1899.—Ordered to be printed.

Mr. PETTIGREW, from the Committee on Indian Affairs, submitted the following

REPORT.

[To accompany S. 5206.]

The Committee on Indian Affairs, to whom was referred the bill (S. 5206) entitled "A bill to declare the proper construction of the act of March third, eighteen hundred and ninety-one, entitled 'An act to provide for the adjudication and payment of claims arising from Indian depredations,'" having had the same under consideration, report thereon as follows:

The act of March 3, 1891 (26 Stat. L., 851; 1 Supp. Rev. Stat., 913), was framed with a view of providing an adequate remedy in the long-pending and much-litigated claims for losses by Indian depredations. The title of this act is "An act to provide for the adjudication and payment of claims arising from Indian depredations," and thus evinces the purpose of Congress.

In carrying out this purpose the jurisdiction of the court was in part limited by restricting it to claims for losses arising at the hands of tribes who were at the time of the depredation in amity with the United States. It was believed, when this was passed, that practically the same construction of the words "in amity" would be followed by the courts as had been followed in the past in the construction of the seventeenth section of the act of June 30, 1834 (4 Stat. L., 73), as finally reenacted in section 2156 of the Revised Statutes.

It is apparent, however, from the decisions of the court contained in its reports from volumes 27 to 33, that a far more rigid construction has been put not only upon this but upon all the other terms of the act than was supposed possible by Congress when the act was passed. This bill seeks to remedy one of these constructions and to authorize the court to conform in this particular with a just rule of law similar to that which had prevailed for many years.

It was decided by the Court of Claims in the case of Samuel N. McCormick, No. 3609, that during the years 1890 and 1891 the condition of amity existing between the United States and the Sioux and Cheyenne Indians was interrupted between December 15, 1890, and January

16, 1891. In order to review the action of the court in this respect, some consideration is necessary of the history of the Indians at this time.

The following authorities are referred to:

Report of Commissioner of Indian Affairs for 1891, volume 1, pages 123-135, 179-181, 327-338, 409-412, cited as "Ind. Rep."

Report of Secretary of War for 1891, pages 55, 56, 132-155, 177-251, cited as "War Rep." Excellent maps face pages 155 and 188.

The origin of the trouble with the Sioux Indians extending from November, 1890, to January, 1891, is stated by General Miles (War Rep., 134) to have been the failure of the Government to comply with its treaty stipulations, chiefly those relating to their supply of beef and other food. The Commissioner of Indian Affairs takes the same view. (Ind. Rep., 132, 135.)

THE MESSIAH CRAZE.

About this time, by some method not disclosed, news was spread among a number of tribes of Indians in the States of Idaho, Montana, Nevada, Wyoming, and South Dakota of a preaching messiah near Pyramid Lake, in Nevada. Representatives of various tribes visited this messiah, including some of the Sioux, but from what bands or reservations or in what numbers does not appear. No considerable movement is reported. (War Rep., 141, 142, 191-194.) The distance from Pine Ridge Agency, the nearest of the Sioux agencies, to Pyramid Lake in a direct line is about 1,000 miles.

The teachings of this messiah were as follows (as reported by a special representative of the War Department, who visited him):

That God had visited him many times since and told him what to do; that he must send out word to all the Indians to come and hear him, and he would convince them that he was preaching the truth; that he must tell the Indians that they must work all the time and not lie down in idleness; that they must not fight the white people or one another; that we were all brothers and must remain in peace; that God gave him power to cause it to rain or snow at his will; that God told him or gave him the power to destroy this world and all the people in it and to have it made over again; and the people who had been good heretofore were to be made over again and all remain young; that God told him that they must have their dances more often, and dance five nights in succession and then stop. * * * That their dancing would commence again next Saturday.

Said he: "This country was all dry early last spring; there was nothing growing, and the prospects for the future were very discouraging to both the Indians and the whites, and they came to me and asked for rain to make their crops grow. I caused a small cloud to appear in the heavens, which gave rain for all, and they were satisfied. I think that all white men should pay me for things of this kind, some \$2, others five, ten, twenty-five, and fifty, according to their means. I told all the head-men who came to see me (meaning the representatives of other tribes) that when they went home to say to their people that they must keep the peace; that if they went to fighting that he would help the soldiers to make them stop. That the people (whites) of this country do not treat him and his people right; that they do not give them anything to eat unless they pay for it. If the whites would treat him well he would have it rain in the valley and snow in the mountains during the winter, so that the farmers would have good crops." (Quoted from War Rep., 193.)

The following statement is made by Gen. Nelson A. Miles, U. S. A., under date of September 14, 1891, as to the effect of the visits to this messiah:

It has been learned that delegates from the different tribes were all present when the messiah appeared or was seen by them at different times, and these all returned to their various reservations, announcing to their relatives and friends what they had learned, fully convinced themselves and convincing others that what they had seen and heard was true. These talks lasted sometimes for four or five days, and the warriors were initiated in the mysteries of the new faith as taught by the so-called messiah. The Indians received the words of prophecy from the messiah with

intense enthusiasm, thinking that after years of distress and discouragement their prayers had been heard and that they were about to enter into a life of happiness, for which they believed nature had originally intended them. The fanaticism and superstition of these people were taken advantage of by their disaffected and designing leaders to encourage them to assume hostilities toward the Government and white people. (War Rep., 142.)

The deficiency of food, a chief source of human discontent and always a stimulus to morbid emotions, made them ready to accept these promises.

NUMBER OF INDIANS.

The Indians concerned were among those of the Standing Rock, Cheyenne River, Pine Ridge, and Rosebud reservations. The total number of Indians on these reservations was as follows (Ind. Rep., 1891, vol. 2, pp. 80, 84):

Standing Rock Agency:	
Yanktonais Sioux.....	1, 781
Hunkpapa Sioux.....	1, 577
Blackfeet Sioux.....	602
Total.....	3, 960
Cheyenne River Agency:	
Blackfeet, Sans Arc, Minneconjou, and Two Kettle Sioux.....	2, 569
Pine Ridge Agency:	
Ogalalla Sioux.....	5, 149
Brule Sioux.....	825
Northern Cheyenne.....	114
Total.....	6, 088
Rosebud Agency:	
Brule Sioux, No. 1.....	1, 096
Brule Sioux, No. 2.....	716
Loafer.....	1, 025
Consolidated Waziaziah, Two Kettle, and Northern Sioux.....	1, 053
Mixed bloods.....	733
Total.....	4, 623
Grand total.....	17, 240

PINE RIDGE AND ROSEBUD INDIANS.

Upon the Pine Ridge and Rosebud Indian reservations the Indians numbered 10,711. A portion of them engaged in "ghost dances." How many engaged in such dances or were to this extent disaffected does not appear.

Under date of November 12, 1890, the Acting Commissioner of Indian Affairs, upon receipt of additional reports from the Indian agents, says that the agent at Pine Ridge reports "that the craze has steadily increased until now it has assumed such proportions, both in the number and spirit of adherents, that it is entirely beyond the control of the agent and police force, who are openly defied by the dancers," and as a means of stopping the dances the agent suggests sending a body of troops sufficient to arrest the leaders therein and imprison them and disarm the balance of the reservation, and on the 13th he transmits a telegram from Agent Royer, showing that 200 participants in the ghost dance, all armed and ready to fight, had overpowered the Indian police, and that the agency is at the mercy of these "crazy dancers," and says:

I deem the situation at said agency arising from the ghost dance as very critical, and believe that an outbreak may occur at any time, and it does not seem to me to

be safe to longer withhold troops from the agency. I therefore respectfully recommend that the matter be submitted to the honorable Secretary of War, with the request that such instructions as may be necessary be given to the proper military authorities to take such prompt action as the emergency may be found by them to demand, to the end that any outbreak on the part of the Indians may be averted and the Indians be shown that the authority of this Department and its agent must be respected and obeyed by them. (War Rep., 144, 145.)

November 14, 1890, the President directed the Secretary of War "to assume a military responsibility for the suppression of any threatened outbreak and to take such steps as may be necessary to that end;" and November 17 following, troops under the command of General Brooke were sent to the Pine Ridge and Rosebud agencies to prevent danger to the civil agents and employees, to prevent the destruction of public property, and to give protection to and encourage the loyal and peaceful Indians. (War Rep., 145.)

These Indians had up to this time not left their respective reservations, committed no depredations upon the property of white persons, or attacked or killed any persons, white or Indian.

Immediately after the arrival of the troops a large body of Indians left the Rosebud Indian Reservation for Pine Ridge, the whole number, including women and children, aggregating 1,800. They destroyed property in their own houses before going and committed depredations on the property of other Indians on the reservation while en route. (Ind. Rep., 412.) This number is fixed by the Indian agent and by Turning Hawk, an Indian (Ind. Rep., 179), both of whom were present.

When they had arrived inside the boundaries of the Pine Ridge Reservation they learned that soldiers were also at the Pine Ridge Agency, and, fearing that the intention of the soldiers was to disarm the Indians entirely and take away their horses, instead of continuing to the Pine Ridge Agency went off toward the Bad Lands in the northern part of the Pine Ridge Reservation. (Ind. Rep., 179, statement of Turning Hawk.)

They took up a camp on the border of this reservation in the Bad Lands.

Killing of cattle and destruction of other property by these Indians almost entirely within the limits of Pine Ridge and Rosebud reservations occurred, but no signal fires were built, no warlike demonstrations were made, no violence was done to any white settler, nor was there cohesion or organization among the Indians themselves. Many of them were friendly Indians who had never participated in the ghost dance, but had fled thither from fear of soldiers, in consequence of the Sitting Bull affair, or through the overpersuasion of friends. (Ind. Rep., 130.)

STANDING ROCK INDIANS.

Upon the Standing Rock Reservation about one-fourth of the Indians, chiefly of the Uncpapa band, were actively affected by the existing excitement up to November 26, 1890 (Gen. Ruger, War Rep., 189). Sitting Bull, who had always been a fomenter of disturbances, had used efforts to foment excitement both on this and other reservations. Up to November 26, 1890—

there was no evidence direct nor fact from which inference might be drawn that there was an intent by the Indians concerned in the dances on either reservation to become "hostile," but the opinion of the best and most intelligent Indians was, if the matter should be allowed to go on without check, that trouble would come; also that those concerned in originating the excitement should be arrested. (Gen. Ruger, War Rep., 189.)

November 25, arrangements were made with William F. Cody (Buffalo Bill), who knew Sitting Bull well, to induce him to come in with him, but at the request of Agent McLaughlin his arrest was postponed.

December 14, the police notified the agent that Sitting Bull was preparing to leave the reservation, and on consultation with the post commander it was decided to arrest him the next morning by the police under the command of Lieutenant Bullhead, with United States troops within supporting distance.

December 15, at daybreak, "39 Indian police and 4 volunteers went to Sitting Bull's cabin and arrested him." Before they could get away with him 75 or more of his followers congregated around the house, so that when he was brought out the police were entirely surrounded. When Sitting Bull saw this he refused to go and called on the "ghost dancers to rescue him." "At this juncture one of them shot Lieutenant Bullhead. The lieutenant then shot Sitting Bull, who also received another shot and was killed outright. Another shot struck Sergeant Shavehead, and then the firing became general."

The result was that Sitting Bull and 7 of his followers were killed and many wounded, while 6 Indian police were killed and others seriously wounded.

A number of Indians, stated at about 400, left the vicinity at this time (War Rep., 183) and started toward the Pine Ridge Reservation; 160 returned to the agency within a few days and 88 two weeks after; 38 of them joined Big Foot's band (hereafter described) and 20 were traced to the Pine Ridge Reservation (War Rep., 183).

All the other Indians on this reservation remained there peacefully, and no other disturbance took place there

CHEYENNE RIVER INDIANS.

At the Cheyenne River Reservation, up to November 16, 1890, about 900 persons, mostly Minneconjou Sioux, were affected by the excitement concerning the expected messiah and the ghost dances; about 200 males, 16 years and upward, were involved. * * * Big Foot also was concerned in dances. (Gen. Ruger, War Rep., 190.)

On December 3, 1890, a force of soldiers was camped on the Cheyenne River near the southwest corner of the reservation, not far distant from Big Foot's village (War Rep., 223). On December 15 Big Foot announced to Colonel Sumner that he and his band were going to the agency for their rations (War Rep., 224). He actually started (Col. Sumner's despatch, Dec. 18, War Rep., 229), but stopped on the 19th (War Rep., 224). Colonel Sumner then took up a post of observation, December 20, close to his camp (War Rep., 224) and Big Foot brought his entire band into Colonel Sumner's camp on December 21 (War Rep., 224). They started on December 22 back to Colonel Sumner's home camp and so marched during that day (War Rep., 224). The Indians were not defiant (War Rep., 225).

On December 23, eluding Colonel Sumner, the entire band moved southward toward the Pine Ridge Reservation (War Rep., 185, 226, 234; Ind. Rep., 390). There were between 300 and 400 in this band (War Rep., 185, 224, 225), including 38 of Sitting Bull's friends from Standing Rock (War Rep., 183, 224, 234). About 100 were warriors (War Rep., 185, 234).

The cause of this movement was apparently their becoming alarmed on the movement of Colonel Merriam's command from Fort Bennett and a rumor that Colonel Sumner would capture them (War Rep., 185).

There was probably no intention of hostilities, but rather a desire on the part of all to seek the crowd at Pine Ridge Agency, and being there

to get better terms than at Bennett (Col. Sumner, War Rep., 227). They passed through the country without committing any depredation or harming any one (Col. Sumner, War Rep., 227).

As they were on their way to the Pine Ridge Agency headquarters, it was not probable that any hostility was intended (Agent Palmer, Ind. Rep., 390). They had passed all roads leading to the camp of the disaffected Rosebud Indians in the Bad Lands and were met by Major Whiteside, U. S. A., 12 miles from the agency and going in that direction (Col. Sumner, War Rep., 227). With a flag of truce, they advanced into the open country and proposed a parley with the troops. This being refused they surrendered unconditionally, marched with him into his camp and remained quietly with him in camp over night at Wounded Knee, expecting to proceed next morning under escort of the troops to Pine Ridge, whither most of the quondam Bad-Land Indians were moving. (Ind. Rep., 130.)

On December 29, the next day, when ordered to turn in their arms they surrendered very few. Sixty guns were obtained by a search in the tepees, and the military, a detachment of the Seventh Cavalry, Custer's old command, and other troops, began to take arms from their persons. When the guns were thus being taken a shot was fired by an Indian apparently half crazy and occupying no position of authority in the tribe or band. The soldiers immediately fired and the Indians fled and were pursued. Big Foot, the leader of the band, was killed where he lay sick in his tent and most of the men were killed around him. The bodies of women and children were scattered along a distance of 2 miles from the scene of the encounter. No other Indians were engaged in this affair excepting the band of Big Foot, made up, as heretofore described, from the Cheyenne River Reservation. (Ind. Rep., 130, 130, Commissioner and Turning Hawk.) Thirty-seven officers and soldiers were killed and 38 wounded, and 146 Indians, men, women, and children, were killed and 33 wounded.

This affair so frightened and exasperated the Indians, who had theretofore been in the bad lands, but who had, on December 27, 1890, broken camp there and moved forward toward the agency, that they returned to the Bad Lands, where they were joined by others from the Pine Ridge Agency who had theretofore remained at the agency under the oversight of the troops. By December 30 the camp at the Bad Lands contained nearly 4,000 Indians, of whom more than 1,000 were warriors. These were made up of parts of the 17,240 Indians on the four reservations.

On this same day a small band of Indians set fire to one of the Catholic missions about 4 miles from the military camp at Pine Ridge, and skirmishing between the Indians and the troops followed, in which a lieutenant was mortally wounded, one private killed, and several wounded. The Indians engaged in this affair did not number more than 60 or 70 young warriors. (War Rep., 151.)

On the same day the wagon train of the Ninth Cavalry was attacked by Indians, and repulsed by the troops guarding it (Gen. Miles, War Rep., 151.)

On January 3, 1891, an attack was made upon the troops under Captain Kerr, of the Sixth Cavalry, but with what loss, if any, does not appear.

What number of troops or of Indians were concerned on these two occasions does not appear. From the absence of information in the official reports, it is inferred that there was no considerable number of Indians.

On January 7 Lieutenant Casey, while endeavoring to get a view of the hostile camp and to talk with the Indians with a view of peace, was shot and killed by Plenty Horses, a chief or headman. Plenty Horses was afterwards indicted for this offense in the district court of South Dakota, where he was tried and acquitted on the ground that the killing was an act of war.

But this was a decision of but one judge, not being concurred in by his associate sitting with him in an advisory capacity. There was nothing to show that he had any associates in this crime.

A murder in "cold blood" (War Rep., 221) by well-known white horse thieves (War Rep., 223) of an Indian belonging to a "hunting party returning from their fall hunt to Pine Ridge" (War Rep., 221), with nothing to indicate hostility, occurred on January 11.

It does not appear that these attacks by small parties, apparently of young warriors, were countenanced or approved by the main body of Indians, numbering 4,000, who were at that time encamped in the Bad Lands.

Congress having in the meantime appropriated funds necessary to comply with the treaty with the Sioux Indians, and supplies of food having been increased, they quieted down, and on January 16 the entire force, aggregating nearly 4,000 Indians, surrendered, and soon thereafter returned to their respective agencies.

CONCLUSIONS.

The following conclusions summarize the events of this period:

1. That the majority of no single tribe was engaged even in disobedience to the civil authorities.
2. That the Indians of the Rosebud and Pine Ridge reservations, in taking camp in the bad lands, without bloodshed, did not destroy the condition of amity. These committed the depredations arising at this time.
3. That the Indians of the Standing Rock Reservation were never out of amity with the United States. The only armed conflict with them was between the police and a very small minority in connection with the killing of Sitting Bull.
4. That the Indians of the Cheyenne River Reservation were never out of amity with the United States. The only seriously affected band, that of Big Foot, was a small minority of the total number, and the conflict at Wounded Knee was the result of accident and not in pursuance of any plan or purpose of war.

5. That none of the events subsequent to the Wounded Knee affair were in pursuance of any plan of hostility, but were the irresponsible acts of small parties.

The opinion of Major-General Schofield, commanding the Army (War Rep., 56), supports these conclusions:

A careful consideration of all the circumstances of this uprising among the Sioux seems to justify the opinion that no considerable number of them had seriously intended to engage in hostilities against the United States, unless driven to such a course by unbearable hardship, or in self-defense against the military operations ordered for their subjection.

The Indians of these four reservations were disturbed and excited, but none of them were "engaged in actual hostilities with the United States," a condition which must exist, the Supreme Court say (*Marks v. United States*, 161 U. S., 305), to warrant the judgment of the Court

of Claims "that the allegation of the petition is not sustained, and that the claim is not one within its province to adjudicate."

The object of the Rosebud Indians in leaving their reservation and going to the bad lands was threefold, (1) to obtain food due them under treaty stipulations but denied them, (2) to engage in their national religious dances, and (3) to protest against the violation of treaty rights. Had there been a hostile intention hostile acts would have been committed, and instead of their early return to their homes an extended and serious Indian war would have resulted.

It does not seem to your committee that the intention of Congress in passing the act of March 3, 1891, was ever to rule out of consideration by the court claims arising from the acts of Indians committed during such temporary disturbances not involving entire tribal organizations. Where an actual and prolonged Indian warfare occurred opportunity is given for the defense provided by the statute; but in this case the entire period of disturbance was short, the persons engaged were parts of different tribes, and the use of the word "war" in its application to merely temporary difficulties is highly inappropriate. Many comprehensive amendatory acts have been proposed since the act of March 3, 1891, and doubtless general relief should be given; but in a case like this, where the claimants are so clearly entitled to relief, they should not be compelled to await the passage of a general bill.

No new claims not now before the court are sought to be introduced under the provisions of this bill. Its operations are confined entirely to cases which have already been presented to the Court of Claims under existing law.

