

Reuben Quick Bear Vs. Leupp

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Appeal No. : 210 U.S. 50

Appellant : Reuben Quick Bear

Respondent : Leupp

Judgement :

Reuben Quick Bear v. Leupp - 210 U.S. 50 (1908)

U.S. Supreme Court Reuben Quick Bear v. Leupp, 210 U.S. 50 (1908)

Reuben Quick Bear v. Leupp

No 669

Argued February 26, 27, 1908

Decided May 18, 1908

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APPEAL FROM THE COURT OF APPEALS

OF THE DISTRICT OF COLUMBIA

SYLLABUS

A statutory limitation on expenditures of the public funds does not, in the absence of special provision to that effect, relate to expenditures of treaty and trust funds administered by the government for the Indians.

The provisions in the Indian Appropriation Acts of 1895, 1896, 1897, 1898 and 1899 limiting and forbidding contracts for education of Indians in sectarian schools relate only to appropriations of public moneys raised by general taxation from persons of all creeds and faith and gratuitously appropriated, and do not relate to the disposition of the tribal and trust funds which belong to the Indians -- in this case, the Sioux Tribe -- themselves, and the officers of the government will not be enjoined from carrying out contracts with sectarian schools entered into on the petition of Indians and to the *pro rata* extent that the petitioning Indian are interested in the fund.

A declaration by Congress that the government shall not make appropriations for sectarian schools does not apply to Indian treaty and trust funds on the ground that such a declaration should be extended thereto under the religion clauses of the federal Constitution.

35 Wash.L.Rep. 766 affirmed.

The appellants filed their bill in equity in the Supreme Court of the District of Columbia, alleging that:

"1. The plaintiffs are citizens of the United States, and members of the Sioux Tribe of Indians of the Rosebud Agency, in the State of South Dakota, and bring this suit in their own right as well as for all other members of the Sioux Tribe of Indians of the Rosebud Agency."

"2. The defendants are citizens of the United States and residents of the District of Columbia, and are sued in this action as the Commissioner of Indian Affairs, the Secretary of the Interior, the Secretary of the Treasury, the Treasurer of

the United States, and the Comptroller of the Treasury, respectively."

"3. That by Article VII of the Sioux Treaty of April 29, 1868, 15 Stat. 635, 637, continued in force for twenty years after July 1, 1889, by 17 of the Act of March 2, 1889, 25 Stat. 888, 894, 895, c. 405, the United States agreed that, for every thirty children of the said Sioux Tribe 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."

"4. That, for the purpose of carrying out the above provision of the said treaty during the fiscal year ending June 30, 1906, the following appropriation was made by the Act of March 3, 1905, 1, 33 Stat. 1048, 1055:"

" For support and maintenance of day and industrial schools, including erection and repairs of school buildings in accordance with article seven of the treaty of April twenty-nine, eighteen hundred and sixty-eight, which article is continued in force for twenty years by section seventeen of the Act of March second, eighteen hundred and eighty-nine, two hundred and twenty-five thousand dollars."

"The fund so appropriated is generally known as the Sioux Treaty Fund."

"5. That 17 of the said Act of March 2, 1889, further provides as follows:"

" And, in addition thereto, there shall be set apart out of any money in the Treasury not otherwise appropriated, the sum of three million of dollars, which said sum shall be deposited in the Treasury of the United States to the credit of the Sioux Nation of Indians as a permanent fund, the interest of which at five per centum per annum, shall be appropriated, under the direction of the Secretary of the Interior, to the use of the Indians receiving rations and annuities upon the reservations created by this act, in proportion to the numbers that shall

so receive rations and annuities at the time that this act takes effect, as follows: one half of said interest shall be so expended for the promotion of industrial and other suitable education among said Indians, and the other half thereof in such manner and for such purposes, including reasonable cash payments per capita as, in the judgment of said Secretary, shall, from time to time, most contribute to the advancement of said Indians in civilization and self-support."

"This fund of three million dollars is generally known as the Sioux Trust Fund."

"6. That the interest on the said Sioux Trust Fund is paid annually by the United States in accordance with the provisions of the second clause of the Act of April 1, 1880, 21 Stat. 70, c. 41, reading as follows:"

" And the United States shall pay interest semiannually, from the date of deposit of any and all such sums in the United States Treasury at the rate per annum stipulated by treaties or prescribed by law, and such payments shall be made in the usual manner, as each may become due, without further appropriation by Congress."

"7. That the Act of June 7, 1897, 1, 30 Stat. 62, 79, c. 3, contains the following provision:"

" And it is hereby declared to be the settled policy of the government to hereafter make no appropriation whatever for education in any sectarian school."

"8. That, in violation of the said provision of the Act of June 7, 1897, the said Francis E. Leupp, Commissioner of Indian Affairs, as aforesaid, has made or intends to make, for and on behalf of the United States, a contract with the Bureau of Catholic Indian Missions of Washington, District of Columbia, a sectarian organization, for the care, education, and maintenance, during the fiscal year ending June 30, 1906 of a number of Indian pupils of the said Sioux Tribe at a sectarian school on the said Rosebud Reservation, known as the St. Francis Mission Boarding School, and in the said contract has agreed to pay, or intends to agree to pay, to the said Bureau of Catholic Indian

Missions of Washington, District of Columbia, a certain rate per quarter as compensation for every pupil in attendance at the said school under the said contract, the said payment (which, as the plaintiffs are informed and believe, will amount to the sum of \$27,000), to be made either from the said Sioux Treaty Fund or from the interest of the said Sioux Trust Fund, or from both."

"9. That all payments made to the said Bureau of Catholic Indian Missions of Washington, District of Columbia, under the said contract, either out of the said Sioux Treaty Fund or out of the interest of the said Sioux Trust Fund, will be payments for education in a sectarian school, and will be unlawful diversions of funds appropriated by Congress, and in violation of the above-recited provision of the Act of June 7, 1897, and such payments will seriously deplete the interest of said Sioux Trust Fund, to the great injury of the plaintiffs and all other members of the said Sioux Tribe of Indians of the Rosebud Agency, and will unlawfully diminish the amount of money which should be expended out of the said Sioux Treaty Fund and the interest of the said Sioux Trust Fund for lawful purposes, for the benefit of the said plaintiffs and all other members of the said Sioux Tribe of Indians of the Rosebud Agency, and will also unlawfully diminish the cash payments which the said plaintiffs and all other members of the said Sioux Tribe of Indians of the Rosebud Agency are entitled to receive per capita out of the interest of the said Sioux Trust Fund."

"10. That the plaintiffs have never requested nor authorized the payment of any part of the said Sioux Treaty Fund, or of the interest of the said Sioux Trust Fund, to the said Bureau of Catholic Indian Missions of Washington, District of Columbia, or any other person or organization whatever, for the education of Indian pupils of the said Sioux Tribe in the said St. Francis Mission Boarding School, or any other sectarian school whatever, but have, on the contrary, protested against any use of either of the said funds, or the interest of the same, for the purpose of such education. "

"11. That the plaintiffs have no remedy at law."

"Wherefore the plaintiffs ask relief, as follows:"

"I. That a permanent injunction issue against the said Francis E. Leupp, Commissioner of Indian Affairs, to restrain him from executing any contract with the said Bureau of Catholic Indian Missions of Washington, District of Columbia, or any other sectarian organization whatever, for the support, education, or maintenance of any Indian pupils of the said Sioux Tribe at the said St. Francis Mission Boarding School, or any other sectarian school on the said Rosebud Reservation or elsewhere, and that a permanent injunction issue against the said Francis E. Leupp, Commissioner of Indian Affairs, and the said Ethan Allen Hitchcock, Secretary of the Interior, to restrain them from paying or authorizing the payment of, either by themselves or by any of their subordinate officers or agents whatever, any moneys of either the said Sioux Treaty Fund or the interest of the said Sioux Trust Fund, or any other fund appropriated, either by permanent appropriation or otherwise, for the uses of the said Sioux Tribe, to the said Bureau of Catholic Indian Missions of Washington, District of Columbia, or to any other sectarian organization whatever, for the support, education, or maintenance of any Indian pupils of the said Sioux Tribe at the said St. Francis Mission Boarding School or any other sectarian school on the said Rosebud Reservation or elsewhere."

"II. And for a permanent injunction against the drawing, countersigning, and paying any warrants in favor of the said Bureau of Catholic Indian Missions of Washington, District of Columbia, or any other sectarian organization whatever, for the support, education, and maintenance of any Indian pupils of the said Sioux Tribe at the said St. Francis Mission Boarding School, or any other sectarian school on the said Rosebud Reservation or elsewhere, payable out of any money appropriated, either by permanent appropriation or otherwise, for the uses of the said Sioux Tribe."

"III. And for general relief. "

The defendants answered, 1. Admitting

"that the plaintiffs are citizens of the United States, and members of the Sioux Tribe of Indians, but aver that the said Indians are only nominal plaintiffs, the real plaintiff being the Indian Rights Association, who have had this suit brought for the purpose of testing the validity of the contract hereinafter referred to."

2. Admitting

"that they are residents of the District of Columbia, and are sued in this action as Commissioner of Indian Affairs, the Secretary of the Interior, the Secretary of the Treasury, the Treasurer of the United States, and the Comptroller of the Treasury, respectively. These defendants, as officers of the government of the United States, have no interest in the controversy raised by the bill except to perform their duties under the law, and they therefore, as such officers, respectfully submit the validity of the contract hereinafter referred to, and the payments thereunder, to the judgment of this honorable court. The real defendant in interest is the 'Bureau of Catholic Indian Missions' -- a corporation duly incorporated by chapter 363 of the Acts of Assembly of Maryland for the year 1894, for the object, *inter alia*, of educating the American Indian directly, and also indirectly, by training their teachers and others, especially to train their youth to become self-sustaining men and women, using such methods of instruction in the principles of religion and of human knowledge as may be best adapted to these purposes."

"As the object of the bill filed is to test the validity of a contract made between the Commissioner for Indian Affairs and the said 'Bureau of Catholic Indian Missions,' and the validity of the payment of the money thereunder, this answer will set forth the facts and the statutes of the United States under which it is contended that such contract and the payment of money thereunder are valid."

This the answer then did at length, and inasmuch as the case was submitted on bill and answer with certain statements of the Commissioner of Indian Affairs, it is thought that the answer

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should be given substantially in full as it is in the margin. *

The case was heard on the bill, the answer, and certain

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proofs, consisting of replies made by the Commissioner of Indian Affairs to certain questions asked in behalf of the plaintiffs, and also of certain statements in the reports of the

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Commissioner of Indian Affairs for the years 1895 and 1906, inclusive, and was argued by counsel, and, upon consideration, an injunction was decreed from

"paying, or authorizing the payment of, either by themselves or by any of their subordinate

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officers or agents whatever, any moneys of the Sioux Treaty Fund, referred to in the said bill and answer, appropriated for the uses of the Sioux Tribe of Indians, to the Bureau of Catholic Indian Missions at Washington, District of Columbia, for the support, education,

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or maintenance of any Indian pupils of the said Sioux Tribe at the St. Francis Mission Boarding School on the Rosebud Reservation in the State of South Dakota, as provided

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in the contract referred to in said bill and answer, and that the defendants be further restrained from drawing, countersigning, and paying any warrants in favor

of the said Bureau of Catholic

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Indian Missions, for the purpose aforesaid, payable out of the said Sioux Treaty Fund; and"

"It is further ordered, adjudged, and decreed that so much of the prayer of the said bill as asks that an injunction issue

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against the defendants, restraining them from paying or authorizing the payment of any of the interest of the Sioux Trust Fund to the said Bureau of Catholic Indian Missions under the said contract, be refused; and "

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"It is further ordered and adjudged that each party pay the respective costs by each incurred."

Each party prayed an appeal from so much of the decree as was adverse to them. It was stipulated

"that the amount

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which was to have been paid from the Sioux Treaty Fund under the contract in regard to which this suit is brought is approximately \$24,000. "

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The case was submitted on record and briefs, and the court affirmed the decree below in respect of the income of the "trust fund," and reversed the injunction against the payment from the "treaty fund," and remanded the case with directions to dismiss the bill at the cost of the complainants, whereupon the case was

brought to this Court on appeal.

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MR. CHIEF JUSTICE FULLER delivered the opinion of the Court.

We concur in the decree of the Court of Appeals of the District, and the reasoning by which its conclusion is supported, as set forth in the opinion of Wright, J., speaking for the court. 35 Wash.L.Rep. 766.

The validity of the contract for \$27,000 is attacked on the ground that all contracts for sectarian education among the Indians are forbidden by certain provisos contained in the Indian appropriation acts of 1895, 1896, 1897, 1898. But if those provisos relate only to the appropriations made by the government out of the public moneys of the United States, raised by taxation from persons of all creeds and faiths, or none at all, and appropriated gratuitously for the purpose of education among the Indians, and not to "tribal funds," which belong to the Indians themselves, then the contract must be sustained. The difference between one class of appropriations and the other has long been recognized in the annual appropriation acts. The gratuitous appropriation of public moneys for the purpose of Indian education has always been made under the heading, "Support of Schools;" whilst the appropriation of the "treaty fund" has always been under the heading, "Fulfilling Treaty Stipulations and Support of Indian Tribes," and that from the "trust fund" is not in the Indian appropriation acts at all. One class of appropriations relates to public moneys belonging to the government; the other to moneys which belong to the Indians and which is administered for them by the government.

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From the history of appropriations of public moneys for education of Indians, set forth in the brief of counsel for appellees and again at length in the answer, it appears that, before 1895, the government, for a number of years, had made contracts for sectarian schools for the education of the Indians, and the money

due on these contracts was paid, in the discretion of the Commissioner of Indian Affairs, from the "tribal funds" and from the gratuitous public appropriations. But in 1894, opposition developed against appropriating public moneys for sectarian education. Accordingly, in the Indian appropriation act of 1894, under the heading of "Support of Schools," the Secretary of the Interior was directed to investigate the propriety of discontinuing contract schools, and to make such recommendations as he might deem proper. The Secretary suggested a gradual reduction in the public appropriations on account of the money which had been invested in these schools, with the approbation of the government. He said: "It would be scarcely just to abolish them entirely -- to abandon instantly a policy so long recognized" -- and suggested that they should be decreased at the rate of not less than twenty percent a year. Thus, in a few years they would cease to exist, and during this time the bureau would be gradually prepared to do without them, while they might gather strength to continue without government aid.

Accordingly, Congress introduced in the appropriation act of 1895 a limitation on the use of public moneys in sectarian schools. This act appropriated under the heading, "Support of Schools,"

"for support of Indian day and industrial schools and for other educational purposes . . . \$1,164,350, . . . Provided, That the Secretary of the Interior shall make contracts, but only with present contract schools, for the education of Indian pupils during the fiscal year ending June 30, 1896, to an extent not exceeding eighty percent of the amount so used for the fiscal year 1895, and the government shall, as early as practicable, make provision for the education of the Indian children in government schools. "

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This limitation of eighty percent was to be expended for contract schools, which were those that, up to that time, had educated Indians through the use of public moneys, and had no relation and did not refer to "tribal funds."

In the appropriation act of 1896, under the same heading, "Support of Schools," the appropriation of public money of \$1,235,000 was limited by a proviso that contracts should only be made at places where nonsectarian schools cannot be provided for Indian children, to an amount not exceeding fifty percent of the amount so used for the fiscal year 1895, and immediately following the appropriation of public money appears the expression,

"and it is hereby declared to be the settled policy of the government to hereafter make no appropriation whatever for education in any sectarian school."

This limitation, if it can be given effect as such, manifestly applies to the use of public moneys gratuitously appropriated for such purpose, and not to moneys belonging to the Indians themselves. In the appropriation act of 1897 the same declaration of policy occurs as a limitation on the appropriation of public moneys for the support of schools, and the amount applicable to contract schools was limited to forty percent of the amount used in 1895. In the act of 1898, the amount applicable to contract schools was limited to thirty percent, and in the act of 1899, the amount so applicable was limited to fifteen percent, these words being added: "This being the final appropriation for sectarian schools." The declaration of the settled policy of the government is found only in the acts of 1896 and 1897, and was entirely carried out by the reductions provided for.

Since 1899, public moneys are appropriated under the heading, "Support of Schools," "for the support of Indian and industrial schools, and for other educational purposes," without saying anything about sectarian schools. This was not needed, as the effect of the legislation was to make subsequent appropriations for education mean that sectarian schools were excluded in sharing in them, unless otherwise provided.

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As has been shown, in 1868, the United States made a treaty with the Sioux Indians, under which the Indians made large cessions of land and other rights. In consideration of this, the United States agreed that for every thirty children a

house should be provided and a teacher competent to teach the elementary branches of our English education should be furnished for twenty years. In 1877, in consideration of further land cessions, the United States agreed to furnish all necessary aid to assist the Indians in the work of civilization, and furnish them schools and instruction in mechanical and agricultural arts, as provided by the Treaty of 1868. In 1889, Congress extended the obligation of the treaty for twenty years, subject to such modifications as Congress should deem most effective, to secure the Indians equivalent benefits of such education. Thereafter, in every annual Indian appropriation act, there was an appropriation to carry out the terms of this treaty, under the heading, "Fulfilling Treaty Stipulations with, and Support of, Indian Tribes."

These appropriations rested on different grounds from the gratuitous appropriations of public moneys under the heading, "Support of Schools." The two subjects were separately treated in each act, and naturally, as they are essentially different in character. One is the gratuitous appropriation of public moneys for the purpose of Indian education; but the "treaty fund" is not public money in this sense. It is the Indians' money, or at least, is dealt with by the government as if it belonged to them, as morally it does. It differs from the "trust fund" in this: the "trust fund" has been set aside for the Indians, and the income expended for their benefit, which expenditure required no annual appropriation. The whole amount due the Indians for certain land cessions was appropriated in one lump sum by the act of 1889, 25 Stat. 888, c. 405. This "trust fund" is held for the Indians, and not distributed per capita, being held as property in common. The money is distributed in accordance with the discretion of the Secretary of the Interior, but really belongs to

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the Indians. The President declared it to be the moral right of the Indians to have this "trust fund" applied to the education of the Indians in the schools of their choice, and the same view was entertained by the Supreme Court of the District of Columbia and the Court of Appeals of the District. But the "treaty fund" has exactly the same characteristics. They are moneys belonging really to the Indians. They

are the price of land ceded by the Indians to the government. The only difference is that, in the "treaty fund," the debt to the Indians created and secured by the treaty is paid by annual appropriations. They are not gratuitous appropriations of public moneys, but the payment, as we repeat, of a treaty debt in installments. We perceive no justification for applying the proviso or declaration of policy to the payment of treaty obligations, the two things being distinct and different in nature, and having no relation to each other, except that both are technically appropriations.

Some reference is made to the Constitution in respect to this contract with the Bureau of Catholic Indian Missions. It is not contended that it is unconstitutional, and it could not be. *Robert v. Bradfield*, 12 App.D.C. 475; *Bradfield v. Roberts*, [175 U. S. 291](#) . But it is contended that the spirit of the Constitution requires that the declaration of policy that the government "shall make no appropriation whatever for education in any sectarian schools" should be treated as applicable, on the ground that the actions of the United States were to always be undenominational, and that therefore the government can never act in a sectarian capacity, either in the use of its own funds or in that of the funds of others, in respect of which it is a trustee; hence, that even the Sioux Trust Fund cannot be applied for education in Catholic schools, even though the owners of the fund so desire it. But we cannot concede the proposition that Indians cannot be allowed to use their own money to educate their children in the schools of their own choice because the government is necessarily undenominational, as it cannot make any law respecting an

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establishment of religion or prohibiting the free exercise thereof. The Court of Appeals well said:

"The 'treaty' and 'trust' moneys are the only moneys that the Indians can lay claim to as matter of right; the only sums on which they are entitled to rely as theirs for education, and while these moneys are not delivered to them in hand, yet the money must not only be provided, but be expended, for their benefit, and in part

for their education; it seems inconceivable that Congress shall have intended to prohibit them from receiving religious education at their own cost if they desire it; such an intent would be one to prohibit the free exercise of religion amongst the Indians, and such would be the effect of the construction for which the complainants contend."

The *cestuis que trustent* cannot be deprived of their rights by the trustee in the exercise of power implied.

Decree affirmed.

*

"3. These defendants admit the allegations of paragraph 3 of the bill, but the pertinent part of the Sioux Treaty of April 29, 1868, is only partially stated therein. The full statement of that part of the Sioux Treaty will be hereinafter made."

"4. These defendants admit the allegations of paragraph 4 of the bill."

"5. These defendants admit the allegations in paragraph 5 of the bill, but aver that, though the provision from 17 of the Act of March 2, 1889, is correctly stated, as far as it goes, there are other portions of said act which should be called to the attention of the court, which is accordingly done hereafter in this answer."

"6. These defendants admit the allegations in paragraph 6 of the bill, but aver that, although clause 2 of the Act of April, 1880, is correctly stated, as far as it goes, there are other provisions of law to be called to the attention of the court in this connection, which is accordingly done in the subsequent part of this answer."

"7. These defendants admit the allegations in paragraph 7 of the bill, but aver that, although the provision in the Act of June 7, 1897, 1, is correctly stated as far as it goes, the section is not fully stated, nor are other parts of the act referred to which bear directly on the question raised by the bill."

"8. These defendants admit that, within the meaning of the acts of Congress the 'Bureau of Catholic Indian Missions' is a sectarian organization, and the industrial

school known as the 'St. Francis Mission Boarding School' on the Rosebud Reservation is a sectarian school."

"These defendants further say that a contract was made by and between F. E. Leupp, Commissioner of Indian Affairs, for and on behalf of the United States of America, and 'the Bureau of Catholic Indian Missions' for the care, education, and maintenance during the fiscal year ending June 30, 1906, of 250 Indian pupils of the Sioux Tribe of Indians at the industrial school known as St. Francis Mission Boarding School, on the Rosebud Reservation, and by such contract it was agreed that there should be paid to the 'Bureau of Catholic Indian Missions' twenty-seven dollars (\$27) per quarter for every pupil in attendance, provided there should not be paid under the contract a sum aggregating more than twenty-seven thousand dollars (\$27,000). This amount, according to the contract, was to be paid from either or all of the funds of the Sioux Tribe of Indians, designated technically as 'Interest on Sioux Fund,' 'Education Sioux Nation,' and 'Support of Sioux of Different Tribes, Subsistence, and Civilization,' all of which, however, are embraced in the two funds stated in the bill; to-wit, the 'Sioux Treaty Fund,' described in paragraph 4 of the bill, and 'the Sioux Trust Fund,' described in paragraph 5 of the bill."

"This contract has been fully performed by the 'Bureau of Catholic Indian Missions,' and there is due to it thereunder from the said funds the total amount of twenty-seven thousand dollars (\$27,000) if the said contract was legally made. This contract was approved by the Acting Secretary of the Interior, Mr. Jesse E. Wilson, by direction of the President of the United States, but, by the same direction, no payments have been made under it, in order that the validity of the contract might be determined by the courts of the United States. The circumstances under which this contract was entered into and approved are hereinafter more fully stated."

"These defendants deny the allegation in paragraph 8 of the bill, that this contract was made in violation of the Act of June 7, 1897, or in violation of any other act of Congress."

"9. These defendants admit that payments under this contract will be payments for education in a sectarian school, as the term 'sectarian school' is defined in the acts of Congress, but they deny that said payments will be in violation of the Act of June 7, 1897, and they further deny that such payments will deplete the interest of said 'Sioux Trust Fund' to the injury of the plaintiffs and all other members of the said Sioux Tribe of Indians of the Rosebud Agency, and they further deny that such payments will unlawfully diminish the amount of money which should be expended out of the said 'Sioux Treaty Fund,' and the interest of the 'Sioux Trust Fund' for lawful purposes for the benefit of the plaintiffs and all other members of the said Sioux Tribe of Indians of the Rosebud Agency, and they further deny that said payments will also unlawfully diminish the cash payments which the said plaintiffs and other members of the said Sioux Tribe of Indians of the Rosebud Agency are entitled to receive per capita out of the interest of the said 'Sioux Trust Fund,' as alleged in paragraph 9 of said bill, all of which will more fully and at large appear by the detailed statements in this answer hereinafter made."

"10. These defendants admit that the plaintiffs, to-wit, the three Indians whose names appear as plaintiffs in the caption of this bill, have never requested or authorized the payment of any part of the Sioux Treaty or trust fund to the said 'Bureau of Catholic Indian Missions,' or any other person or organization whatsoever for the education of Indian pupils of the said Sioux Tribe in said 'St. Francis Mission Boarding School,' or any other sectarian boarding school whatever, but, on the contrary, these defendants admit that the said plaintiffs protest against any use of either of the said funds, or the interest of the same, for the purpose of such education, as stated in paragraph 10 of the bill."

"11. But now these defendants, further answering, say that, although they have answered in terms all the allegations in all the paragraphs of the bill contained, it is necessary, for a full understanding of the rights of the parties, that all the pertinent facts connected with the use of money under the contract of the United States for the education of the Indians in contract schools which are sectarian within the meaning of the acts of Congress should be stated, so that, in the light of all these facts, only a few of which are stated in the bill, the legality of the contract assailed

may be judicially determined."

"12. The Catholic missions schools were erected many years ago at the cost of charitable Catholics, and with the approval of the authorities of the government of the United States, whose policy it was then of encourage the education and civilization of the Indians through the work of religious organizations. Under the provisions of the act of 1819, ten thousand dollars (\$10,000) were appropriated for the purpose of extending financial help 'to such associations or individuals who are already engaged in educating the Indians,' as may be approved by the War Department."

"In 1820, twenty-one schools conducted by different religious societies were given eleven thousand eight hundred and thirty-eight dollars (\$11,838), and from that date until 1870 the principal educational work in relation to the Indians was under the auspices of those bodies, aided more or less by the government. For a long time the different denominational schools referred to were aided by the government without any formal contract."

"In 1870, an act of Congress was passed appropriating one hundred thousand dollars (\$100,000) for the support of Indian schools among Indian tribes not otherwise provided for, *i.e.*, among tribes not having treaty stipulations providing funds for educational purposes, and these appropriations continued until 1876. Contracts were made annually with the mission schools of the different denominations, payable out of this appropriation for the education of Indian pupils. As to the tribes having funds for educational purposes under treaty stipulations, contracts were also made with the mission schools of the different denominations payable out of the treaty funds. In 1876, Congress began the general appropriation 'for the support of industrial schools and other educational purposes for the Indian tribes,' and these annual appropriations from the public moneys of the United States have been made from that time until the present. These appropriations always were put in the appropriation acts under the heading 'Support of Schools,' and from these public funds, and, in the discretion of the Commissioner of Indian Affairs, from the tribal funds hereinafter explained, were paid the amounts due under the contracts made by the Commissioner of Indian

Affairs, with the approval of the Secretary of the Interior, with the various denominational schools for the education of Indian pupils."

"Sometime before 1895, opposition developed to these contracts with denominational schools, on the ground that the public moneys of the United States, raised by taxation, should not be used for education in sectarian institutions, and also for other reasons."

"Accordingly, there is found in the appropriation act of 1894, c. 290, 28 Stat. 311, approved August 15, 1894, in that part of the act appropriating the public moneys for the support of Indian schools and under the heading 'For Support of Schools,' the following:"

" That the expenditure of the money appropriated for school purposes under this act shall be at all times under the supervision and direction of the Commissioner for Indian Affairs and in all respects in conformity with such conditions, rules, and regulations as to the conduct of and methods of instruction and expenditure of money as may, from time to time, be prescribed by him, subject to the approval of the Secretary of the Interior."

" Provided. That the Secretary of the Interior is hereby directed to inquire into and investigate the propriety of discontinuing contract schools and whether, in his judgment, the same can be done without detriment to the education of the Indian children, and that he submit to Congress at the next session the result of such investigation, including an estimate of the additional cost, if any, of substituting government schools for contract schools, together with such recommendations as he may deem proper."

"In his annual report for the fiscal year ending June 30, 1894, the Secretary of the Interior said:"

" The contract schools are now the subject of general discussion. I agree fully with those who oppose the use of public money for the support of sectarian schools. But this question should be considered practically. The schools have grown up. Money has been invested in their construction at a time when they were

recognized as wise instrumentalities for the accomplishment of good. I do not think it proper to allow the intense feeling of opposition to sectarian education, which is showing itself all over the land, to induce the Department to disregard existing conditions. We need the schools now, or else we need a large appropriation to build schools to take their place."

" It would scarcely be just to abolish them entirely -- to abandon instantly a policy so long recognized. My own suggestion is that they should be decreased at the rate of not less than 20% a year. Thus, in a few years more, they would cease to exist, and during this time, the bureau would be gradually prepared to do without them, while they might gather strength to continue without government aid. This is the policy which is now controlling the Department, and, unless it is changed by legislation, it will be continued. The decrease in the appropriation for the present fiscal year is 20%."

"Congress, in pursuance of this recommendation, introduced for the first time in the appropriation act of 1895, c. 188, 28 Stat. 888, a limitation on the use of public money in sectarian schools."

"The act appropriates, under the heading 'Support of Schools,' of the public moneys of the United States"

"for support of Indian day and industrial schools and for other educational purposes . . . \$1, 164,350. . . ."

" Provided, That the Secretary of the Interior shall make contracts, but only with present contract schools, for the education of Indian pupils during the fiscal year ending June 30, 1896, to an extent not exceeding 80% of the amount so used for the fiscal year 1895, and the government shall, as early as practicable, make provision for the education of Indian children in government schools."

"Congress, in the Indian appropriation act of 1896, c. 398, appropriated from the public moneys of the United States, under the head 'Support of Schools,' 'for support of Indian day and industrial schools and for other educational purposes, . . . \$1,235,000, . . . ' and then, as a qualification upon the appropriation, and

following immediately thereupon, under the same heading, 'Support of Schools,' occurs the following language in the act:"

" And it is hereby declared to be the settled policy of the government to hereafter make no appropriation whatever for education in any sectarian school. Provided, That the Secretary of the Interior may make contracts with contract schools, apportioning, as near as may be, the amount so contracted for among schools of various denominations, for the education of Indian pupils during fiscal year 1897, but shall only make such contracts at places where nonsectarian schools cannot be provided for such Indian children, and to an amount not exceeding 50% of the amount so used for the fiscal year 1895."

"Congress, in the Indian appropriation act of 1898, c. 545, appropriated from the public moneys of the United States, under the head of 'Support of Schools,' for"

"support of Indian day and industrial schools, and for other educational purposes . . . \$1,100,000 . . . Provided, That the Secretary of the Interior may make contracts with contract schools, apportioning, as near as may be, the amount so contracted for among other schools of various denominations, for the education of Indian pupils during the fiscal year 1899, but shall only make such contracts at places where nonsectarian schools cannot be provided for such Indian children, and to an amount not exceeding 30% of the amount so used for the fiscal year 1895."

"Congress, in the Indian appropriation act of 1899, c. 324, appropriated from the public moneys of the United States, under the head of 'Support of Schools,'"

"for support of Indian day and industrial schools, and for other educational purposes, . . . \$1,100,000 . . . Provided, That the Secretary of the Interior may make contracts with contract schools, apportioning as near as may be the amount so contracted for among schools of various denominations, for the education of Indian pupils during the fiscal year 1900, but shall only make such contracts at places where nonsectarian schools cannot be provided for such Indian children, and to an amount not exceeding 15% of the amount so used for the fiscal year 1895, the same to be divided proportionately among the said several contract

schools, this being the final appropriation for sectarian schools."

"The several Indian annual appropriation acts since 1899, to-wit, beginning with 1900 to the present time, contain under the head of 'Support of Schools' simply a general appropriation of public moneys 'for the support of Indian and industrial schools, and for other educational purposes,' without any proviso in any of them respecting contracts with sectarian schools, or without any statement in any of them of the policy of the government with respect to sectarian schools."

"It will be observed that the phrase"

"and it is hereby declared to be the settled policy of the government to hereafter make no appropriation whatever for education in any sectarian school,"

"which is cited and relied on in paragraph 7 of the bill, is found only in the Indian appropriation acts of 1896 and 1897, and in no prior or subsequent acts of Congress; that in these two acts, it is a limitation on the appropriation of public moneys, and is found only under the heading 'Support of Schools,' under which the money of the United States is appropriated for support of Indian schools, and does not occur in any other part of these acts of Congress. These defendants therefore submit that this statement of policy, insofar as it can now have any legal effect, was intended only to apply to appropriations of public moneys for education in sectarian schools, and inasmuch as the appropriation of public moneys for these purposes was being reduced from year to year by a percentage which would make the last appropriation to be for the fiscal year ending June 30, 1900, there was no necessity for repeating the phrase containing the policy of the government in any acts after 1897. The cessation of the appropriation from the public moneys for education in the sectarian schools was treated as the accomplishment of the purpose contained in the statement of the policy found in the acts of 1896 and 1897."

"The above paragraph contains all the matter pertinent to the appropriation of public moneys for the support of education in sectarian schools. These appropriations ceased with the Indian appropriation act of 1899, have never been

made since, nor is anyone asking that they should be made, or that any public moneys of the United States raised by taxation should be employed for such purposes."

"13. But these defendants, further answering, say that, entirely separate and apart from the public moneys which, as stated in paragraph 12 of this answer, were appropriated until 1899 for education in sectarian schools, there are other funds, known as 'tribal funds,' which may be applied for these purposes. These funds, these defendants respectfully submit, are not public moneys, but really belong to the Indians themselves, and it is the purpose of this paragraph of this answer to give a general account of these funds, and a particular account of the 'tribal funds' of the Sioux Indians, which are directly in controversy in this case, will be given in the next paragraph."

"These 'tribal funds' may be roughly grouped into two classes: (a) Where cessions of land or other property have been made by the Indians, and, in consideration thereof, a certain sum of money is deposited in the Treasury of the United States, which is used for the Indians in the discretion of the Secretary of the Interior. These are called 'trust funds.' (b) Where cessions of land or other property have been made by the Indians under treaties, and in consideration therefor the government of the United States has, by treaty, bound itself to furnish money for the civilization and education of the Indians. These are called 'treaty funds.'"

"Examples of these funds are as follows:"

"Menominee Fund: Interest, \$7,651.96 per annum (Treaty of 1848, Art. 5, 9 Stat. 952)."

"Menominee Log Fund: Interest, \$76,313.98 per annum (Act of March 22, 1882, 22 Stat. 30, c. 46; Act of June 12, 1890, 26 Stat. 146, c. 418)."

"Osage fund: Interest, \$416,371.95 per annum (Treaty 1865, Art. 2, 14 Stat. 687; Act July 15, 1870, 16 Stat. 362, c. 296; Act of June 16, 1880, 21 Stat. 292, c. 251)."

"Osage fund: Interest on \$69,120, 5% (Treaty Jan. 2d 1825, for educational purposes per Senate Resolution, Jan. 9, 1838, 7 Stat. 242)."

"The yearly amounts provided for the Indians under treaties are annually appropriated in the Indian appropriation acts, not in that part of the act under the title 'Support of Schools' which appropriated the public money of the United States, but under the heading 'Fulfilling Treaty Stipulations with, and Support of, Indian Tribes,' for, although formally appropriated, the moneys are not regarded as the moneys of the United States, but moneys belonging to the Indians, due to them under the treaties, in consideration of their cession of lands and other rights."

"But inasmuch as, according to Indian custom, the property is held in common, and inasmuch as the Indians are regarded as wards of the nation, the money is not distributed per capita, but is expended for them, and for their benefit and advantage, under the discretion of the Secretary of the Interior. For some of the laws conferring this discretion, see 14 Stat. 687; 16 Stat. 362, c. 296; 21 Stat. 292, c. 251; 22 Stat. 30, c. 46; 25 Stat. 895, c. 405; 26 Stat. 146, 344."

"14. As to the 'Sioux Funds' directly in controversy, the facts are as follows:"

"On March 2, 1889, the act of Congress of 1889, c. 405, was approved. This was entitled, 'An Act to Divide a Portion of the Reservation of the Sioux Nation of Indians in Dakota into Separate Reservations, and to Secure the Relinquishment of the Indian Title to the Remainder.' Under this act, the Indians made certain cessions of land, and, in partial consideration therefor, it was provided in 17 of the act as follows:"

" And, in addition thereto, there shall be set apart out of any money in the Treasury not otherwise appropriated the sum of three millions of dollars, which said sum shall be deposited in the Treasury of the United States to the credit of the Sioux Nation of Indians as a permanent fund, the interest on which at five per centum per annum, shall be appropriated under the direction of the Secretary of the Interior to the use of the Indians receiving rations and annuities upon the reservations created by this act, in proportion to the numbers that shall so receive rations and

annuities at the time this act takes effect, as follows: one half of said interest shall be so expended for the promotion of industrial and other suitable education among said Indians, and the other half . . . for such purposes, including reasonable cash payments per capita, as, in the judgment of said Secretary, shall, from time to time, most contribute to the advancement of said Indians in civilization and self-support."

"This is the fund called the 'Sioux Trust Fund' in the fifth paragraph of this bill."

"The method of the payment of the interest on this fund was changed in 1880 by the act of 1880, chapter 41, as follows:"

" The Secretary of the Interior be, and he is hereby, authorized to deposit in the Treasury of the United States, any and all sums now held by him, or which may hereafter be received by him, as Secretary of the Interior and trustee of various Indian tribes, on account of the redemption of United States bonds or other stocks and securities belonging to the Indian trust fund, and all sums received on account of sales of Indian trust lands, and the sales of stocks lately purchased for temporary investment, whenever he is of the opinion that the best interests of the Indians will be promoted by such deposits in lieu of investments, and the United States shall pay interest semiannually from the date of deposit of any and all such sums in the United States Treasury at the rate per annum stipulated by treaties, or prescribed by law, and such payments shall be made in the usual manner, as each may become due, without further appropriation by Congress."

"This provision is partially cited in the bill in paragraph 6."

"15. Under a treaty between the United States and different tribes of Sioux Indians, made on April 29, 1868 (15 Stat. 635), these Indians made large cessions of land and other rights, and, in partial consideration therefor, the United States agreed with them as follows:"

" Art. VII. In order to insure to civilization of the Indians entering into this treaty, the necessity of education is admitted, especially of such of them as are or may be settled on said agricultural reservations, 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 not less than twenty years."

"By the Act of Congress of February 28, 1877, c. 72 (19 Stat. 254-256), ratifying an agreement with bands of Sioux Nation, in consideration of further land cessions, it was provided:"

" In consideration of the foregoing cession of territory and rights, and upon full compliance with each and every obligation assumed by the said Indians, the United States does agree to provide all necessary aid to assist the said Indians in the work of civilization, to furnish to them schools and instruction in mechanical and agricultural arts, as provided for by the treaty of 1868."

"By the seventeenth section of the act of 1889, c. 405 (25 Stat. 894), it was provided:"

" that the 7th article of the said Treaty of April 29, 1868, securing to said Indians the benefits of education, subject to such modifications as Congress shall deem most effective to secure to said Indians equivalent benefits of such education, shall continue in force for twenty years from and after the time this act shall take effect."

"By the act of 1905, c. 1479 (33 Stat. p. 1048), entitled --"

" An Act Making Appropriations for Current and Contingent Expenses of the Indian Department, and for Fulfilling Treaty Stipulations with Various Indian Tribes for the Fiscal Year Ending June 30th, 1906, and for Other Purposes"

"it was provided under the heading 'Fulfilling Treaty Stipulations with, and Support of, Indian Tribes' as follows:"

" For support and maintenance of day and industrial schools, including erection and repairs of school buildings in accordance with Art. 7 of the Treaty of April 29th, 1868, which article is continued in force for twenty years by sec. 17 of the Act of March 2, 1889, \$225,000."

"A similar appropriation has been annually made for many years back in the Indian appropriation acts."

"This is the 'treaty fund' in dispute, referred to in the 4th paragraph of the bill."

"These defendants respectfully represent that this 'treaty fund' does not differ from the 'trust fund,' in the main point that it is money belonging to the Indians, and not public money of the United States."

"Both funds arise from cessions made by the Indians of lands and other rights. The one is a specific sum of which the United States is a trustee for the Indians; the other is an obligation payable in installments under the agreement of a treaty."

"These defendants therefore respectfully submit that as to both of these funds there is nothing to prevent the Secretary of the Interior from using them in his discretion, and especially from using them as the real owners thereof desire and request."

"16. Prior to 1900, the sectarian schools were aided by appropriation from the public moneys, and, in the discretion of the Secretary of the Interior, from the tribal funds just described."

"In 1900, not only the public appropriations ceased, as has been heretofore shown, but all aid from the tribal funds also ceased, except as to the Osage treaty and trust funds hereinbefore referred to. At the request of the Osage Indians, their treaty funds have been annually and uninterruptedly applied to the Catholic mission schools under annual contract with the Commissioner of Indian Affairs, approved by the Secretary of the Interior. With the exception of the Osage funds,

no 'tribal funds' were applied to education in denominational schools from 1900 to 1904."

"In the meantime, application was made to President McKinley by the 'Bureau of Catholic Indian Missions' for the revocation of the 'Browning ruling' and the use of 'tribal funds' for the education of the Catholic Indian children in Catholic schools."

"On September 30, 1896, the then commissioner of Indian Affairs, D. M. Browning, in answer to the question, 'whether parents of Indian children have the right to decide where their children shall attend school,' said:"

" It is your duty first to build up and maintain the government day schools, as indicated in your letter, and the Indian parents have no right to designate which school their children shall attend."

"This was the 'Browning ruling.' It was ordered abrogated by President McKinley in 1901, and some eight months after, to-wit, January 17, 1902, it was formally abrogated by the Commissioner of Indian Affairs with the approval of the Secretary of the Interior."

"The question of the use of the 'tribal funds' was referred by President McKinley to the Secretary of the Interior, and by him to the Commissioner of Indian Affairs, who decided adversely to the appropriation on February 12, 1901."

"17. On or about January 1, 1904, the matter of the application for the use of 'tribal funds' for the education of Indian children in mission schools was brought to the attention of President Roosevelt by the 'Bureau of Catholic Indian Missions,' who urged that the Indians should be allowed to use their own money in educating their own children in the schools of their choice."

"President Roosevelt took up the matter on January 22, 1904 at a meeting in the executive office of the White House at which were present the Attorney General (Mr. Knox) and Mr. Russell, of the Department of Justice, and Secretaries Hitchcock, Cortelyou, and Wilson, and Postmaster General Payne. The President was legally advised that, notwithstanding the declaration of Congressional intent

not to make appropriations in the future of public moneys of the American people for sectarian institutions, the previous laws giving the Secretary of the Interior discretion to use certain moneys of the Indians, held in trust, in any way that he might see fit, including assistance to sectarian schools, were not repealed, and consequently his discretion remained."

"The President decided that, inasmuch as the legal authority existed to grant the request of the Indians, they were entitled, as a matter of moral right, to have the moneys coming to them used for the education of their children at the schools of their choice."

"A full and detailed statement of the action of the President in 1904 is set forth in his letter of February 3, 1905, which, with its enclosure, is herein set out at length:"

" * * * *"

"This new request was submitted to the Department of Justice, and the Department decided, as set forth in the accompanying report, that the prohibition of the law as to the use of public moneys for sectarian schools did not extend to moneys belonging to the Indians themselves, and not to the public, and that these moneys belonging to the Indians themselves might be applied in accordance with the desire of the Indians for the support of the schools to which they were sending their children. There was, in my judgment, no question that, inasmuch as the legal authority existed to grant the request of the Indians, they were entitled, as a matter of moral right, to have the moneys coming to them used for the education of their children at the schools of their choice. Care must be taken, of course, to see that any petition by the Indians is genuine, and that the money appropriated for any given school represents only the *pro rata* proportion to which the Indians making the petition are entitled. But if these two conditions are fulfilled, it is, in my opinion, just and right that the Indians themselves should have their wishes respected when they request that their own money -- not the money of the public -- be applied to the support of certain schools to which they desire to send their children. The practice will be continued by the Department unless Congress should decree to the contrary, or, of course, unless the courts should decide that

the decision of the Department of Justice is erroneous."

"This communication enclosed a letter from the Attorney General setting forth at length the grounds for the conclusion"

"that, notwithstanding the declaration of Congressional intent not to make appropriations in the future of public moneys of the American people for sectarian institutions, the previous laws giving the Secretary of the Interior discretion to use certain moneys of the Indians, held in trust, in any way that he might see fit, including assistance to sectarian schools, were not repealed, and consequently his discretion remained. For some of these laws, see 14 Stat. 687; 16 Stat. 362, c. 296; 21 Stat. 292, c. 251; 22 Stat. 30, c. 46; 25 Stat. 895, c. 405; 26 Stat. 146, 344."

" * * * *"

"Accordingly, the following contracts were made by the United States with various sectarian organizations for the education of Indian children from 'tribal funds' for the fiscal year ending June 30, 1906:"

Name of School Denomination Pupils Tribe Rate per Total per
annum year

St. Joseph Catholic 170 Menominee \$108 \$ 18,360

St. Louis Catholic 75 Osage 125 9,375

St John Catholic 65 Osage 125 8,125

Immaculate

Conception Catholic 65 Sioux 108 7,020

Holy Rosary Catholic 200 Sioux 108 21,600

St. Francis Catholic 250 Sioux 108 6,480

St. Labore Catholic 60 Northern

Cheyenne 108 6,480

St. Mary Catholic 60 Quapaw 50 500

Zoa's Boarding

School Lutheran 40 Menominee 108 4,320

Total 935 \$102,780

"In June, 1905, the Commissioner of Indian Affairs was notified by the 'Bureau of Catholic Indian Missions' that it was prepared to care for and educate during the fiscal year ending June 30, 1906, Indian pupils at the several schools carried on by it among the Sioux, Menominee, Osage, Northern Cheyenne, and Quapaw tribes, upon the same terms and conditions as stipulated in its contracts for carrying on these schools for the fiscal year 1905, and requested that it be granted a renewal of the contracts in question, payable in each case from the trust and treaty funds of the tribe among which the school is located, for the twelve months beginning July 1, 1905."

"To this application the Commissioner replied that the request would receive careful consideration; that the applicability of the trust and treaty funds had been submitted to the proper authorities for a definite determination, and indicated how petitions should be prepared, and the safeguards under which the signatures of the Indians should be made. Petitions were duly filed, signed under all the safeguards, by the Catholic Indians."

"In the meantime, the schools were opened at the usual time and instruction given to the required number of pupils, in the confidence that the contracts applied for would be renewed."

"The Attorney General not having rendered any decision in the matter, the President, by a letter dated December 23, 1905, addressed to the Commissioner of Indian Affairs, after quoting a part of his letter of February 3, 1905, hereinbefore referred to, said:"

" There are two kinds of Indian funds involved in this matter. One is the trust fund, which requires no appropriation by Congress, and which clearly is to be administered as the Indians themselves request. As regards this fund, you will treat it on the assumption that the Indians have the right to say how it shall be used, so far as choosing the schools to which their children are to go is concerned, and each Indian is a tribe to be credited with his *pro rata* share of the funds, which you will apply for him to the government school, where that is the school used, or to the church school, where that is the school used, instead of segregating any portion of the fund for the support of the government school, and prorating the balance."

" The other fund consists of moneys appropriated by Congress in pursuance of treaty stipulations. As to these moneys, it is uncertain as to whether or not the prohibition by Congress of their application for contract schools applies -- that is, whether or not we have the power legally to use these moneys as we clearly have the power to use the trust funds. It appears that certain of the contract schools are now being run in the belief that my letter, quoted above, authorized the use of the treaty funds. It would be a great hardship, in the absence of any clearly defined law on the subject, to cut them off at this time arbitrarily, and inasmuch as there is a serious question involved, I direct that, until the close of the fiscal year, these schools be paid for their services out of the moneys appropriated by Congress, in pursuance of treaty obligations, on the same basis as the schools paid out of the trust funds -- always exercising the precautions directed in my letter of February 3d 1905, 'to see that any petition by the Indians is genuine, and that the money appropriated for any given school represents only the *pro rata* proportion to which

the Indians making the petition are entitled.' But no new contracts are to be entered into for such payments after the close of the present fiscal year unless there is authorization by Congress or some determination by the courts."

"Accordingly, the contracts for the fiscal year ending June 30, 1905, hereinafter set forth, were renewed for the fiscal year ending June 30, 1906, the new contracts being executed as of July 1, 1905."

"The services have been performed under all these contracts and the money paid in all of them, except under the contract with the 'Bureau of Catholic Indian Missions' for the education of 250 Indian pupils at St. Francis Mission School on the Rosebud Reservation. The payment of the \$27,000 which is due under this contract has been withheld pending the decision by this honorable court as to validity of the contract and the appropriation of tribal funds for such purposes."

"18. And these defendants, specifically answering as to the contract in dispute, say:"

"That it is a contract made between F. E. Leupp, Commissioner of Indian Affairs, for and on behalf of the United States of America, and the 'Bureau of Catholic Indian Missions,' executed as of July 1, 1905, for the care, education, and maintenance of 250 Indian pupils at the St. Francis Mission School, Rosebud Reservation, South Dakota at \$108 per capita, per annum, amounting to \$27,000. The contract was approved by Jesse E. Wilson, Acting Secretary of the Interior."

"Application for the contract was made by the 'Bureau of Catholic Indian Missions' on June 6, 1905."

"On March 26, 1906, a petition duly signed and genuinely signed by 212 members of the Sioux Tribe of Indians of the Rosebud Agency, South Dakota, was filed, asking that the said contract applied for be entered into with the bureau."

"The payments under the contract were to be made from the 'Sioux Trust Fund' and the 'Sioux Treaty Fund,' as hereinbefore described, in the discretion of the Commissioner of Indian Affairs."

"There are 4,986 Indians on the rolls of the Rosebud Reservation, and the amount of tribal income applicable to education, in the discretion of the Commissioner, is - -"

"\$250,047.90, or a per capita of \$50.15."

"The 212 petitioners represent 669 shares, or \$33,550.35, and of this they ask that \$27,000 be used for the education of their children in St. Francis Mission School. The following table will represent the *pro rata* shares in these tribal funds, and the per capita shares:"

4,986 Indians, \$250,047.90 Tribal funds, \$50.15 per capita

669 shares

Petitions, 33,550.35 Tribal funds, \$50.15 per capita

4,317 Petitions (non-

petitions)

4,986 \$250,047.90 Tribal funds, \$50.15 per capita

"The cost of the government school for the fiscal year was about \$76,830. Since the shares of the petitioning Indians amount to \$33,550.35, and the sum asked for the school is only \$27,000 out of this share, and the petitioners were genuinely signed, the terms of the executive order of President Roosevelt of February 3d 1905, *e.g.*, 'to see that any petition by the Indians is genuine, and that the money appropriated for any given school represents only the *pro rata* proportion to which the Indians making the petition are entitled,' have been strictly carried out."

"The services under this contract have been fully performed to the satisfaction of the Commissioner of Indian Affairs, and the twenty-seven thousand dollars (\$27,000) agreed to be paid is due and payable, if this honorable court determines that it is legally payable out of the 'Sioux Trust Fund' and the 'Sioux Treaty Fund.'"

" * * * * "

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