

BEFORE THE INDIAN CLAIMS COMMISSION

TILLAMOOK BAND OF TILLAMOOKS, NAALEM)
 (Ne-ha-lun) BAND OF TILLAMOOKS,)
 CLATSOP TRIBE, KATHLAMET BAND OF)
 CHINOOKS, NUC-QUEE-CLAH-WE-MUCK)
 TRIBE, the CONFEDERATED TRIBES OF)
 SILETZ INDIANS, CONFEDERATED TRIBES)
 OF THE GRAND RONDE COMMUNITY, OREGON,)
 and portions and descendants of all such)
 tribes and bands,)

Plaintiffs,)

v.)

THE UNITED STATES,)

Defendant.)

Docket No. 240

Decided: June 10, 1955

Appearances:

Garland S. Ferguson, III,
 with whom were E. L.
 Crawford, and Joseph W.
 Creagh,
 Attorneys for Plaintiffs.

Walter A. Rochow, with whom
 was Mr. Assistant Attorney
 General, Perry W. Morton,
 Attorneys for Defendant.

OPINION OF THE COMMISSION

WITT, Chief Commissioner, delivered the opinion of the Commission.

The plaintiffs claim that they had aboriginal title, that is, Indian title, to the lands they ceded to the defendant by unratified treaties dated August 6, 1851 and of August 7, 1851; that the consideration of \$21,000 later received for said lands was grossly inadequate and unconscionable and that they are entitled under subdivisions 3 and 5 of

Section 2 of the Indian Claims Commission Act to the difference in the value at the time of the cessions of said lands and the consideration as aforesaid that they received therefor.

The defendant contends (1) that "original Indian title" is not compensable; (2) that plaintiffs are not such an identifiable group as required by the Indian Claims Commission Act to entitle them to maintain this action; (3) that plaintiffs do not constitute an aboriginal entity capable of acquiring "original Indian title"; (4) that plaintiffs have not established that they exclusively used and occupied a definable area; (5) that all or part of the lands claimed were taken by defendant; and (6) that plaintiffs have not established a right of action presently vested in them.

Although the amended petition in this case includes as plaintiffs the Clatsop Tribe, the Kathlamet Band of Chinooks and the Nuc-quee-clah-we-muck Tribe, no evidence has been submitted in support of any claim by the plaintiffs above-named and consequently this action is dismissed as to the three above-named plaintiffs; and is considered as being prosecuted only by descendants of the Nehalem Band and Tillamook Band of Tillamook Indians.

Plaintiffs claim that the ancestors of the Tillamook Band were parties to a treaty dated August 7, 1851 (which was never ratified), by the terms of which said band ceded to defendant the lands described in Finding 3, and that the Nehalem Band of Tillamooks by treaty dated August 6, 1851, (which was never ratified) ceded to defendant its lands as described in Finding 4.

While plaintiffs contend that they have made proof of exclusive occupancy in the respective bands to the respective tracts claimed, they at the same time contend that the claims of the Naalem Band of Tillamooks to the lands claimed to have been owned by them was recognized by act of Congress of June 7, 1897, which act provided payment therefor (which plaintiffs contend was unconscionable); and that Congress by act of August 24, 1912, recognized the ownership by the Tillamook Band of Tillamooks of the lands for which they make claim and made provision for the payment thereof, which said payment it is contended was unconscionable.

The unratified treaties to which reference is made were negotiated by Anson Dart, Superintendent of Indian Affairs, and others representing the United States, and signed by various Indians purporting to be chiefs and headmen of the Naalem Band of Tillamooks and the Tillamook Tribe of Indians.

Said treaties were among a number of treaties entered into by the said Dart and others on the part of the Government with tribes of Indians occupying lands lying west of the Cascade Mountains in the Territory of Oregon. These treaties were negotiated and executed pursuant to act of Congress dated June 5, 1850 (9 Stat. 437) under the terms of which the President was authorized to appoint Commissioners to negotiate treaties with the Indian tribes in the Territory of Oregon "for the extinguishment of their claims to lands lying west of the Cascade Mountains."

Thirteen (13) Indian treaties negotiated in 1851 pursuant to the said act of Congress were forwarded to the Commissioner of Indian

Affairs by said Anson Dart, and accompanying the same he addressed a communication to said Commissioner of Indian Affairs dated November 7, 1851. Said letter of transmittal states that the thirteen treaties ceded to the United States more than 6,000,000 acres of land -- that said treaties were concluded at Tansey Point near the mouth of the Columbia River and cover a tract of over 100 miles on the Pacific running back along the Columbia River about 60 miles. Mr. Dart states in this communication that this land "was owned" by small tribes of Indians. The letter further refers to the conduct of the negotiations, the reluctance of some of the Indians to agree to removal elsewhere because of having to leave their home country where their ancestors were buried, etc., etc.

It is significant that in this communication Mr. Dart refers to the fact that he concluded treaties with "thirteen tribes" and that at each treaty concluded "the entire band was present."

It is also significant that each treaty ceded a different tract of land which indicates separate occupancy and separate claims to the two tracts by the respective bands ceding the same.

The Commission finds that satisfactory proof has been made of the exclusive use and occupancy by the plaintiffs of lands within the area ceded by the two unratified treaties to which reference has been made; the difficulty has been the determination of the extent of this occupancy but, in keeping with the findings of fact in reference thereto as made by this Commission, and which are made a part of this opinion, we hold that the plaintiffs used, occupied and controlled, to the

exclusion of other Indians the area described in Finding 8(b).

In view of the finding as to use and occupancy, it is unnecessary to determine whether or not there was recognition by the Government of Indian ownership of lands by the plaintiffs; however, it is significant that among the treaties negotiated by Anson Dart in pursuance of the act of Congress of June 5, 1850 (as were the unratified treaties involved herein) was the treaty dated August 11, 1855, (which was not ratified) which became the basis for the suit entitled Alcea Band of Tillamooks vs. United States reported in the Court of Claims in 103 C. C.s. 494 and affirmed by the Supreme Court in 329 U. S. 1.

The evidence herein, the viewpoint of Congress with reference thereto when appropriations by the acts of 1897 and 1912 were made to the Indians because of said treaties, and the acceptance of proof by the Court of Claims in the Alcea case as to the title of the Indians to the lands involved therein, is thought to establish the fact that the plaintiffs are entitled to a finding, that they were the possessors of Indian title to lands, which were included in the tracts for which they bring suit for compensation. If the payments made in 1897 and 1912 for said lands were unconscionable of course the releases secured thereby do not estop the plaintiffs from prosecuting this case.

The Findings of Fact and Opinion of the Court of Claims in the Alcea Band of Tillamooks case reported in 103 C. Cls., pp. 494-563 should in our opinion be given great consideration in determining the issues involved in the instant case. The unratified treaty in the Alcea case as hereinbefore mentioned was negotiated in pursuance of

the act of Congress of June 5, 1850, just as were the unratified treaties involved in the instant case. The provisions of the act of June 5, 1850, authorized the negotiation of the treaties with the several tribes of Indians in the Territory of Oregon for the extinguishment of their claims to land lying west of the Cascade Mountains, and, if practicable, for the removal of these Indians east of said mountains. It was evidently in contemplation that treaties should be negotiated with all the Indian tribes in said Oregon territory who made claims to lands west of the Cascade Mountains. Maps and other evidence of occupancy of the lands to the west of the Cascade Mountains were in evidence in the case of the Alcea Band of Tillamooks and same show the occupancy by tribes fronting the entire Pacific coast from the State of Washington to the California line, that is, of all the Indian tribes in the Territory of Oregon occupying lands west of the Cascade Mountains. The finding by the Court of Claims in the Alcea case that the bands of Indians there involved, occupied to the exclusion of other tribes the several tracts of land therein claimed in accordance with the descriptions as found and the treaties there involved, is persuasive of the contention that the representatives of the Government negotiating these treaties knew what lands were occupied by the several tribes. This knowledge of the location of these several tribes and the lands occupied by them would reasonably be expected to apply to the tribes involved in the instant case and the lands occupied by them.

The viewpoint of Congress as expressed in the acts of 1897 and 1912, and the reports of the Committees of Congress in connection with said

acts, together with other facts as established by our findings of fact make us conclude that plaintiffs are entitled to be recognized as successors in interest to the original owners and occupants of a portion of the lands involved.

The defendant makes other contentions in the way of defense to the claims asserted but the Commission does not think they are well taken and in view of our findings, we think that it is unnecessary to here discuss or make findings as to other defenses.

From the above, and the findings herein made, it is our conclusion that the plaintiffs had original Indian title to the lands as described in Finding 8(b); and that the Government treated the lands in the unratified treaties as public lands, open to settlement by whites from the dates of the treaties; and that, therefore, the plaintiffs are entitled to recover the difference between the value of said lands described in Finding 8(b) as of the date of the unratified treaties, less the amount that has heretofore been received by them for said lands, and less whatever offsets, if any, defendant might be able to establish.

Edgar E. Witt
Chief Commissioner

Concurring:

Louis J. O'Marr
Associate Commissioner

Wm. M. Holt
Associate Commissioner