

BEFORE THE INDIAN CLAIMS COMMISSION

THE SUQUAMISH TRIBE OF INDIANS,)

Petitioner,)

vs.)

Docket No. 132)

THE UNITED STATES OF AMERICA,)

Defendant.)

Decided: March 25, 1957

Appearances:

Frederick W. Post and
Malcolm S. McLeod,
Attorneys for Petitioner.

Donald R. Marshall, with
whom was Mr. Assistant
Attorney General Perry W. Morton,
Attorneys for Defendant.

OPINION OF THE COMMISSION

O'Marr, Commissioner, delivered the opinion of the Commission.

The petition in this case presents the claim of the Suquamish Tribe of Indians. It is alleged that the Suquamish Tribe lived separate and apart from all other tribes in the Puget Sound area, occupying their lands exclusively to all other tribes. (Pet. Par. V). It is further alleged by petitioner that on January 22, 1855, the Suquamish and other tribes executed the Treaty of Point Elliott (12 Stat. 927, II Kapp. 669) with defendant by the terms of which a large amount of land in the Puget Sound area was ceded and relinquished to the United States (Pet. Par. VI). Of the large area ceded petitioner

contends that a specific part thereof was exclusively used and occupied by the Suquamish Tribe. The lands which the petitioner claims original Indian title to are described in Finding 3 (the petition was amended twice to include lands not described in the original petition). The area claimed is located in what is now the northwestern part of the State of Washington in the Puget Sound area and lies between Hood Canal and Admiralty Inlet.

Petitioner contends that the consideration received under the terms of the Point Elliott treaty of January 22, 1855, supra, for the cession of these lands was unconscionable and that the United States by obtaining the cession in such a manner "acted unfair and dishonorably, and against the standards of equity and conscience" (Pet. Par. VII). The parties stipulated that the present proceedings would be limited to a determination of the issues of (a) whether petitioner has the capacity to maintain this action and (b) whether or not petitioner held original Indian title to the lands described in the petition at the date of taking (Tr. 2-A, 2-B, Hearing, Seattle, Washington, June 10, 1952).

Defendant contends among other things that aboriginally there were several autonomous political, social, economic, land-using units in the area claimed and that the Suquamish Tribe was the village-tribe near the present town of Suquamish, Washington, and that any recovery allowed in this case must only be in favor of the descendants of that village-tribe and that there is no substantial evidence of the area exclusively occupied by any of the village-tribes within the claimed area nor is there

evidence that the "Suquamish village-tribe is a successor in interest to any or all of the village-tribes that aboriginally existed in the claimed areas" (Def. Br. pp. 1-3). Defendant further urges that petitioner's evidence does not disclose the present identity, residence, or ancestry of the individuals, or groups of individuals who compose the Suquamish Tribe; that the claim is barred by the decision in Duwamish Tribe v. United States, 79 C. Cls. 530; and that the Commission erred in permitting the petitioner to amend its description of the area claimed so as to include additional lands after the date for filing claims, August 13, 1951, had passed. Defendant contends that the amended pleadings thus present new claims which should be barred as not being timely presented.

This Commission in deciding The Snohomish Tribe v. The United States, 4 Ind. Cl. Comm. 549, The Muckleshoot Tribe v. The United States, 2 Ind. Cl. Comm. 424, and The Nooksack Tribe v. The United States, 1 Ind. Cl. Comm. 333, held that the Duwamish case, supra, was not res adjudicata of the claims of those tribes involving original Indian title since under the jurisdictional act involved therein the Court of Claims did not have jurisdiction to determine such claims. For the reasons set forth in the above previously decided cases the Commission concludes that the present claim of the Suquamish Tribe is not barred by the decision in the Duwamish case, supra.

As previously stated defendant contends that the Commission incorrectly sustained petitioner's motion to amend to include lands in the area claimed that were not described in the original petition. Defendant urges that

the claim of original Indian title to these additional lands presents new claims which are barred by the Indian Claims Commission Act. In permitting the amendments to the petition to include these additional lands the Commission was of the opinion that the amended petition did not include new claims. Rule 13(c) of the General Rules of Procedure of this Commission provides:

Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading.

This Rule is identical to Rule 15(c) of the Federal Rules of Civil Procedure. With respect to this Rule, Moore's Federal Practice, Volume 3, pages 850-856, states in part:

Rule 15(c) is based on the idea that a party who is notified of litigation concerning a given transaction or occurrence is entitled to no more protection from statutes of limitation than one who is informed of the precise legal description of the rights sought to be enforced. If the original pleading gives fair notice of the general fact situation out of which the claim or defense arises, an amendment which merely makes more specific what has already been alleged generally, or which changes the legal theory of the action, will relate back even though the statute of limitations has run in the interim. While it is still the rule that an amendment which states an entirely new claim for relief will not relate back, the Federal Rules have broadened the meaning of the concept "cause of action," shifting the emphasis from a theory of law as to the cause of action, to the specified conduct of the defendant upon which the plaintiff relies to enforce his claim. * * *

The amendments to the petition in this case do not change the gist of the action, or the subject of the controversy. Petitioner claims the United States took a cession of petitioner's lands which it held by original Indian title for which defendant allegedly paid an unconscionable

consideration and in so doing acted unfair and dishonorably. The amendments do not change the claim or assert new claims.

Since the first white contact Suquamish Indians have been located generally in the area of land on the great peninsula between Hood Canal and Admiralty Inlet in the northwestern part of what is now the State of Washington. (Findings 1 through 10). Aboriginally there were three or more autonomous villages within the area claimed by petitioner. As this Commission has previously found in Muckleshoot Tribe v. United States, supra, Nooksack Tribe v. United States, supra, and Snohomish Tribe v. United States, supra, village autonomy prevailed aboriginally in the Puget Sound area. Although the Suquamish villagers did have a feeling that the lands around their villages belonged to them they did share gathering, fishing and hunting lands contiguous to their village areas within part of the claimed area with other villages of the same group. As with many of the Indians in the Puget Sound area the Suquamish were water oriented deriving most of their food from such source (Fdg. 27).

Following the organization of the Territory of Washington out of the north half of Oregon Territory in 1853, Governor Isaac Stevens of Washington Territory, who also acted as Superintendent of Indian Affairs for said territory, urged the necessity of making treaties with the Indians within the territory of Washington. Governor Stevens was directed to negotiate such treaties and instructed to endeavor to unite the numerous bands and fragments of tribes into tribes. Agents were appointed to prepare the Indians for negotiations and chiefs were commissioned for various groups or bands of Indians in the territory.

One of the treaties negotiated by Governor Stevens pursuant to his instructions from the Commissioner of Indian Affairs and under the authorization of the Act of July 31, 1854, 10 Stat. 315, 330, was the Treaty of January 22, 1855 (12 Stat. 927), commonly known as the Point Elliott treaty. The treaty provided for a cession of land to the United States for a stated consideration by twenty-two named tribes "and other allied and subordinate tribes and bands of Indians * * *." The Suquamish Tribe of Indians was named in the treaty preamble as a party and seven signatures are those of the Suquamish chief and sub-chiefs. The territory ceded by said treaty is located in northwestern Washington but petitioner claims original Indian title to but a part thereof which is described in Finding 3.

The evidence indicates that as of the date of said Point Elliott treaty in 1855 there were two or three permanent villages within the area claimed by petitioner. There appears to have been a village near Chico on Dyes Inlet, one at the present site of Suquamish and one at the head of Liberty Bay near Poulsbo. Although the Indians were known by the name of their village, all of these Indians in this area were called Suquamish by the whites and after the treaty were so reported by the agents and officials of the Government in estimating their number and reporting their location. By the terms of the treaty a reservation was established at Port Madison within the area claimed and following the treaty the Suquamish Indians, numbering about 450, were reported on or in the immediate vicinity of the reservation (Fdg. 16). There were ties of kinship between these villages whose inhabitants all

came to be known as Suquamish, they spoke a common dialect and had a common culture, and they shared gathering, fishing and hunting areas which were contiguous to their immediate village areas. It can readily be seen from the evidence that these villages amalgamated at or about the time of the treaty and have since been known as the Suquamish Tribe in the reports of Government agents and officials charged with administration since the date of the treaty. It is also readily apparent that their descendants live today in that part of northwestern Washington and that petitioner is the successor in interest to the claims of said village-tribes.

Based upon the findings of fact herein made, and all of the evidence and testimony of record, the Commission concludes that as of the date of the Treaty of January 22, 1855, the ancestors of petitioner held original Indian title to the lands described in Finding 29, and that the United States acquired said Indian title to said lands on March 8, 1859, the effective date of the treaty. Such questions as the consideration paid for and the acreage and value of said lands, and the rights retained in said lands by petitioner's ancestors must await a further hearing and additional evidence.

Louis J. O'Marr
Associate Commissioner

We concur:

Edgar E. Witt
Chief Commissioner

Wm. M. Holt
Associate Commissioner