

BEFORE THE INDIAN CLAIMS COMMISSION

|                                 |   |                |
|---------------------------------|---|----------------|
| THE S'KLALLAM TRIBE OF INDIANS, | ) |                |
|                                 | ) |                |
| Petitioner,                     | ) |                |
|                                 | ) |                |
| vs.                             | ) | Docket No. 134 |
|                                 | ) |                |
| THE UNITED STATES OF AMERICA,   | ) |                |
|                                 | ) |                |
| Defendant.                      | ) |                |

Decided: December 2, 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

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

Petitioner herein, The S'Klallam (also known as Clallam) Tribe of Indians, asserts a claim against defendant for an undetermined amount of land based upon the claim of aboriginal possession and an unconscionable consideration which petitioner alleges was paid for such lands that were taken by defendant under the terms of the Treaty of Point No Point (12 Stat. 933; II Kapp. 674).

The defendant admits that "the so-called S'Klallam Tribe and other tribes and bands" entered into such treaty (Dft's ans., par. 7) but denies that petitioner is a "tribe, band, or other identifiable group of American Indians." (Dft's ans., par. 2). There were no boundaries set under the Treaty of Point No Point so far as individual groups were concerned. Defendant simply took a cession of a large area of land from four groups of Indians, upon which petitioner bases this action.

The issues for determination in this case are limited, in part, by the stipulation of the parties to the questions of (1) capacity of petitioner to maintain this action under the Indian Claims Commission Act (60 Stat. 1049) and (2) what area, if any, did petitioner's ancestors exclusively occupy (I Tr. 2A). Additionally, there also arises, incident to the determination of petitioner's capacity to sue, the question of whether or not there was a merger of the Chimakum Tribe with the S'Klallam Tribe. Although petitioner has nowhere alleged such merger of these tribes in the pleadings, notwithstanding this, petitioner in its requested finding of fact No. 12 specifically requests this Commission to find such merger did occur and that the "S'Klallam Tribe is thus entitled to claim Chimakum Territory."

The "Chem-a-kum Tribe" was a party to the signing, January 26, 1855, of the Treaty of Point No Point and was recognized as such in the treaty's preamble.

The Chimakum were a once powerful war-like tribe of the Puget Sound area. Their lands were mentioned by the early writers and shown

on early maps as being the Port Townsend to Port Ludlow Bay area of the Quimper Peninsula. Their numbers were greatly reduced by wars with the Schohomish and only a remnant of the once powerful tribe survived after these wars in 1850. Earlier attacks of small pox disease in the 1830's had taken a great toll on Chimakums. Thus, they were reduced to a population of about 100 in 1855. (Stevens' Report, Map 187, Tube 1033, Office of Indian Affairs, National Archives).

The Chimakum country was taken possession of by the S'Klallams in about 1855 to 1857 and their people became subjects of the S'Klallam Tribe. (Stevens' Report, 1854). It is, therefore, our opinion that petitioner has the right to assert any Chimakum claim in this action because they became merged into the S'Klallam prior to the ratification of the Treaty of Point No Point, but after the treaty had been signed.

Taking this view of the time element of such merger, which we believe the evidence adequately reflects, of the Chimakums into the S'Klallams, only the S'Klallam Tribe has legal status today to present their claim, since no other entity is, or has been, in existence to represent them since such merger in 1857. (House Report No. 2680, 83d Congress, 2d Session; I Tr. pp. 23-24).

The S'Klallam population was variously reported in treaty times as between 800 and 1500 living in from eleven to twenty villages between Clallam Bay and Port Townsend. The Chimakum numbered from 70 to 100 in treaty times and inhabited an area from Port Discovery, including Port Townsend and Port Ludlow Bay. Chimakums jointly occupied the Port Gamble area, across the Hood Canal from Port Ludlow, together with Skokomish and S'Klallam Indians. (III Tr., pp. 77-88).

This Commission upon a previous hearing overruled defendant's plea of five year limitation, and permitted petitioner to attach an amendment to its original petition thereby enlarging its boundaries of land areas originally claimed to the south and east. This amendment was filed with the Commission on November 15, 1955, and reads as follows:

Commencing at the mouth of the Hoko River, thence to the town of Sappho; thence to the peak of Mt. Olympus; thence to the peak of Mt. Anderson; thence to the north point of Quilcene Bay; thence along the shoreline of Bolton Peninsula to Dabop; thence along the shoreline of Iondos Peninsula which is also the east shoreline of Dabop Bay, to Oak Head which is the southernmost point of Iondos Peninsula; thence to Hazel Point; thence to Bangor; thence along an east-west line to a point mid-distant between Hoods Canal and Liberty Bay; thence northwestward on the divide between Hoods Canal and Puget Sound to Foulweather Bluff; thence to Liplip Point; thence to Fort Flagler; thence to Wilson Point; thence along the south shore of the Strait of Juan de Fuca to the mouth of the Hoko River which was the place of beginning.

Thereafter, petitioner on July 6, 1956, filed a disclaimer to certain lands west of Mt. Olympus which are claimed by the Quileute Tribe in Docket No. 155.

Petitioner maintains that it had aboriginal possession of the above-described area and ceded an undetermined amount of land under the Point No Point Treaty of January 26, 1855.

The circumstances surrounding the negotiation and execution of the Treaty of Point No Point on January 26, 1855, are well known and the difficulties of resolving the boundaries of the tribes involved in such cession are discussed by Chief Justice Booth in the Court of Claims

opinion (1934) 79 C. Cls. 530 at p. 597, styled Duwamish, et al., v. The United States. The beneficent policy of Congress set forth in the statute creating our jurisdiction enjoins us to depart from the purely legal considerations of that opinion into the most difficult questions of equitable standards of conduct between the Indian parties and the Government of the United States, and the fixing of aboriginal boundaries and definable areas, if any, are found exclusively occupied.

The evidence before us is replete with references of early explorers, adventurers, missionaries, ethnographers, and Government men to the "S'Klallams, S'Clallams or Clallams, or Nus-klai-yum" or a tribe of Indians who spoke a Salish dialect. Records of the existence of the S'Klallam Indians date back to the earliest colonization of this area by the Hudson Bay Company in the 1830's. They were officially recognized as a tribe of Indians in the preamble of the ratified Treaty of Point No Point. Petitioner alleges it is a tribal organization recognized by the Secretary of the Interior and as such is entitled to bring this action. We have determined that petitioner has established legal capacity to bring this claim under Section 2 of the Indian Claims Commission Act. (Our finding of fact No. 1).

Petitioner claims that the amended description covers that tract or area of land within this cession to which they had aboriginal title. The consideration under the treaty was a total of \$60,000, but the share the S'Klallam Tribe was to receive is nowhere computed, so far as we know, although certain S'Klallam offsets were set out in the Duwamish opinion in 1934, cited above.

The density of the forest adjoining the narrow flatlands along the southern shores of the Strait of Juan de Fuca prevented any extensive use of the interior by the sea-oriented S'Klallams. The flatlands of the Strait of Juan de Fuca were four or five miles wide at the mouth of the Dungeness River and here were the largest villages of S'Klallam in aboriginal times. Stetlum (Jamestown) had a population of about 170, and Sequim, about 100 people. At Port Discovery, as at Clallam Bay, the flatlands are narrow and the land rises more sharply from the shore line. The flat lands at Clallam Bay are about one-half mile wide and about one mile wide at Discovery Bay. (Dr. Carroll L. Riley, III, Tr., p. 77).

The S'Klallam and Chinook Indians used the canoe as a means of transportation, hewn from the cedar trees which grew along the shore line. Their subsistence was from the shell fish, salmon, clams and other sea foods. They also fished up the inlets and rivers along the coastal area near their flatland villages. Berry picking and root gathering in the immediate vicinity of their villages supplemented their fish diet. The canoe constituted their principal means of travel before the white man brought in the saw mill and horses. S'Klallams, like other fish-eating Indians of the Puget Sound area, primarily utilized only a small area of land varying from one to five miles in depth along the southern shore of the Strait of Juan de Fuca.

Although there was some variation in the "east" and "west" Clallam dialect, that is between members of their tribe residing along Clallam Bay with those in the Dungeness area, there was no difficulty in oral

communication between S'Klallam villages. There were potlaches and winter ceremonies held between all of their villages, and also between Clallams, Makahs, Chemikums and Sko-ko-mish Indians. Most generally these ceremonies were held in the Port Gamble area and adjoining areas at the north end of the Hood Canal during the winter months. Like other Indians of the Puget Sound area, Nooksack, Muckleshoot, Skokomish, Makahs and others, the S'Klallam villages were autonomous in political character. They practiced exogamy between tribes, but were not bound by political control outside their family and village life. The Chimakums occupied the Quimper peninsula area and spoke the Chimakum language prior to their merger into the S'Klallam Tribe.

The S'Klallams had a central chief but his functions were more like the social prestige of middle twentieth century monarchs than the substantial authority wielded by the Indian chiefs of eastern parts of the United States.

The Indian signers to the Treaty of Point No Point represented four groups of Indians and no effort was made to allocate boundary lines within the ceded land area among these Indians.

This Commission stated in the Nooksack case and repeated in the Muckleshoot case (also involving Puget Sound claims) at page 677 (and cited by the Court of Claims with approval in the Chehalis case) as follows:

It is perhaps not required that the boundary lines be as accurately defined as a surveyor would like them but some general boundary lines of the occupied territory must be shown and it must be shown that the occupant had the possession to the exclusion of other tribes; constructive possession is not sufficient.

\* \* \* it is extremely difficult to establish facts after the lapse of time involved in matters of Indian litigation. In attempting to establish boundaries and occupancy on the basis of fragmentary facts and often uninformed opinions and the work of ethnologists who must of necessity base their conclusions upon much the same information, it becomes necessary to take a common sense approach based upon experience with matters of this nature. \* \* \* (Snake or Paiute Indians v. United States, 125 C. Cls. 241, 254).

We have found that petitioner is an identifiable tribe of Indians, that they merged with the Chimakum Tribe in aboriginal times, at least before the cession of their lands to the United States became effective, and that there is no evidence in this record with any degree of certainty as to the location of petitioner's exact boundaries, as such. Petitioner's general boundaries were the Hoko River on the west, the Admiralty inlet on the east, the Strait of Juan de Fuca on the north, and the foothills of the Olympic Mountains on the south. But the Skokomish, Queets, Quilleutes, Hoh and other Indians freely used the areas of the Olympic Mountains for hunting of deer, elk and bear, together with a few hunters of the S'Klallams.

The S'Klallam Tribe lived in about a dozen villages within a contiguous area. Each village used a rather small area of land surrounding it for root gathering and berry picking. Larger areas were, of course, used to fish, hunt, and dig clams. Other tribes frequently used these areas surrounding the immediate village areas, more frequently they were guests and kinsmen of the S'Klallam. These were "permissive users" and not "users in common" with the S'Klallam. This Indian practice of land usage by Puget Sound Indians has been noticed by the Commission in the



previous cases of this area where we have taken cognizance of the common ties of Indians in this area, land uses, their generally loose sense of property ownership and spirit of independence compared to the political cohesion and organization characteristic of Indians in the eastern part of the United States.

The S'Klallam Tribe of Indians occupied certain portions of the northern part of the Olympic Peninsula from time immemorial along the southern shores of the Strait of Juan de Fuca.

We have found that the S'Klallams were an identifiable tribe in Finding No. 1 and that they used and occupied, in aboriginal times, that area of land described in Finding No. 19.

It is also the opinion of this Commission that petitioners are the descendants and successors in interest of both the S'Klallam and Chimakum Indians who aboriginally and at the time of the negotiation of the Treaty of Point No Point on January 26, 1855, exclusively used and occupied the area described in Finding No. 19, and that the effective date of the cession of said areas to the defendant was March 8, 1859, the date of ratification of the Treaty by the United States Senate (Finding of Fact No. 20).

Any question of failure or unconscionable consideration, of interests, for lands ceded by the treaty, or other compensation or off-sets and credits, or of reservation lands set aside under the treaty, or of any other lands which may have been allotted or acquired by petitioner or

by their ancestors and predecessors, in interest, from the defendant shall be the subject of further hearings and evidence, together with the question of the value of said lands as of March 8, 1859.

Edgar E. Witt  
Chief Commissioner

Concurring:

Louis J. O'Marr  
Associate Commissioner

Wm. M. Holt  
Associate Commissioner