

BEFORE THE INDIAN CLAIMS COMMISSION

THE SAMISH TRIBE OF INDIANS,	::	
Petitioner,	::	
	::	
vs.	::	Docket No. 261
	::	
THE UNITED STATES OF AMERICA,	::	
Defendant.	::	

Decided: March 11, 1958

Appearances:

Warren J. Gilbert, Frederick
W. Pots, Malcolm S. McLeod,
Attorneys for Petitioners

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

OPINION OF THE COMMISSION

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

Petitioners herein, the Samish Tribe of Indians, assert a claim against defendant for an undetermined amount of land based upon a claim of aboriginal possession and "a completely inadequate and unconscionable consideration" paid by defendant for said land under the terms of the Point Elliott Treaty of January 22, 1855 (12 Stat. 927, II Kapp 669) under the provisions of Section II, of the Indian Claims Commission Act. (60 Stat. 1049)

The defendant has asserted a special defense of res judicata to petitioners' claim based on a prior judgment rendered in a previous claim prosecuted by petitioners. (Duwamish, et al vs. U.S. 79 C. Cls. 530, 1934). Consistent with our prior ruling on the identical plea urged by defendant in Lummi Tribe of Indians vs. the United States, Docket No. 110, 5 Ind. Cls. Comm. 543, the defendant's plea is overruled.

We permitted defendant to amend its answer and therein to deny petitioner tribe are "Treaty" Indians, and further, to allege in the alternative that the "Samish Indians participated in the payment made thereunder and the other considerations named therein" (in accord with the terms of the cession of Indian lands contained in the Point Elliott Treaty).

There is no dispute that the Treaty of Point Elliott, signed on January 22, 1855, included within its cession boundaries the areas the petitioners assert here to have been exclusively owned and occupied by Samish Indians. Defendant, by an amendment to the original answer, merely denies that Samish Indians, or their representative, were present and participated in such treaty. In the alternative, defendant alleges that if petitioner tribe were so represented, then they also received the agreed consideration. In this regard, it is true that Samish Indians were not named, as such, in the preamble or as a party signatory to the Treaty of Point Elliott.

The Court of Claims heard the testimony of 155 witnesses in 1934 in the trial of the Duwamish case, which included a claim of this petitioner based upon certain issues not pertinent to the case now before this Commission. The Court of Claims, after hearing that very lengthy case, rendered an opinion some eight years after those claims were originally filed in 1927, holding this petitioner (Samish Indians) was "a party to the Treaty of Point Elliott." We think that finding was amply justified in the evidence, particularly since some of the witnesses in those proceedings could recall from memory events contemporary with the negotiation and execution of the Treaty of Point Elliott.

Even if this Commission were not bound by such holding, the references by Indian agents and government men in their reports of treaty times, fragmentary though the information is, nevertheless documents the identity of a group of "Indians called Samish who lived and occupied an island and river of the same name." There can be no reasonable doubt, treaty Indians or not, that Samish Indians occupied some lands of the Puget Sound area as an identifiable tribe of Indians prior to white settlement.

Several of the witnesses who appeared before this Commission in June, 1952, either were related to the witnesses who testified or had personally testified over twenty years earlier in the Duwamish Case involving certain claims urged by the Samish Indian Tribe. One of the petitioner's witnesses described her relationship to a signer of the Treaty of Point Elliott. Dr. Wayne P. Suttles in preparing his thesis, "Economic Life of the Coast Salish of Haro and Rosario Straits" treated in part with the Samish Indians. Some of his informants in that work also appeared as members and witnesses for petitioner in this case. The reports of Gibbs, Stevens, Fitzhugh, and other government records confirm their tribal identity.

These members of petitioner tribe who testified before us presently reside in various places, some on Swinomish Reservation, some on Lummi Reservation and a number have removed to nearby white settlements. The practice of exogamy between Puget Sound tribes dating from aboriginal times has resulted in intertribal blood relationships among the great majority of Indians in this area. This fact is amply shown

in the testimony of Indian witnesses who have appeared before this Commission to all of the claims of Puget Sound Indians. The succeeding generation, Indians with blood relationship to aboriginal members of the Samish Tribe, have continued to perpetuate their identity as a tribal entity into contemporary times. Missionary Eells discusses them in 1887. They appeared as a tribe before the Court of Claims in 1927. Some of the first generation descendants of the aboriginal tribe of Samish Indians have testified before this Commission as well as many more second generation survivors who are the lineal descendants of this tribe.

It is our duty to examine the whole record broadly on the issue of identity of petitioner and with special reference to whether or not "these Indians were treated as an entity by defendant," and recognized by Indian agents and other government men even after treaty times and this is relevant to the issue of identity.

We conclude that petitioner, which alleges it is a tribal organization recognized by the Secretary of Interior of the United States, has shown itself to be the descendants and successors in interest of the Samish Indians of aboriginal times.

Turning to the most difficult branch of this case, the matter of defining the area used and occupied exclusively by the Samish Tribe of Indians, we are again confronted with the obstacles of incomplete, fragmentary evidence, of vague and general boundary evidence, and the subsistence areas of subject tribe. Also involved are those areas which were jointly used by Samish Indians with neighboring tribes, in order

to define those areas and delimit the land exclusively used and occupied by claimant in aboriginal times.

As this Commission has observed in a number of opinions involving similar claims of other Indian tribes in the Puget Sound area, the culture and economic life of the tribe must be considered, since the loose political cohesion of Puget Sound Indians will not permit these tribes to be fitted into a fixed pattern similar to that of the Indian Tribes of the eastern portions of the United States. The Samish spoke the same dialect, moved about more or less together in search of fish, clams, oysters, berries and camas and retained a hold on certain island and peninsula areas of land for their homes and subsistence.

Lane, de Harley and Sterling omit the Samish from their accounts and listings of population of Puget Sound Indians. The official reports of both Dr. Henry R. Schoolcraft and Dr. George Gibbs give the Samish population as 150. This figure may have been drawn from the report of territorial Governor Isaac Stevens' report of 1854. (Dr. C. L. Riley, II Tr. 10).

Dr. Curtis in "The North American Indian" observed that the Lummi Tribe claimed in addition to the mainland of this area from Chuckanut Bay to Birch Bay the following: ---Blakely, Lopez (on the North and West coast), --- (Lummi Tribe of Indians v. U.S., Docket 110, 5 Ind. Cls. Comm. 548).

Governor Stevens noted the Samish occupied the southern part of Bellingham Bay. Dr. C. L. Riley suggests Stevens meant the Samish Bay

area since Stevens also mentions the Lummi in the same area. Dr. Riley's reasoning is supported by the report of Agent Fitzhugh's report of the Bellingham Bay Agency in 1856. (II Tr. 10; Dft. Ex. 66, p. 617).

Missionary Myron Eells, writing in the American Antiquarian in 1887, stated:

Indians from nearly all the other tribes on the part of Puget Sound have either intermarried with those of this (Skokomish) Reservation, lived here for a time or made visits here * * *

The Samish * * * These Indians lived about the Samish River, south of the Lummi. They speak the same language, but are said to be a distinct tribe. There were but two bands of them; the Samish who lived at the mouth of the river, and the Bista-tlous, who lived up the river. (Vol. IX, pp. 1-9, Dft. Ex. 22a, pp. 1-2);

In March of 1887, Eells wrote in the same journal:

The Lummi reservation lies at the mouth of the Nook-sack River, not far from the Northern Boundary of Washington Territory, and comprises 12,312 acres * * * for which the Indians received patents in 1884. More than half of this land is very valuable * * * first quality. (Dft. Ex. 22b, pp. 101-103).

The ethnologists whose reports are before us uniformly point out two propositions: First, that the Samish Indians used and occupied Samish Island and Guemes Island as their winter home in aboriginal times. Secondly, and more widely treated, is the proposition that "Salt-chuck" or "fish-eating" Indians of Puget Sound area roamed about in their canoes seasonally through the straits, bays, rivers, and inlets catching the bountiful supply of shell and fin fish. In the winter months they returned to the many fires in their huge cedar log multiple family lodges and engaged in potlaches and trading with their neighboring tribesmen.

In Lummi Tribe v. United States, 5 Ind. Cls. Comm. 525, Fdg.

12, this Commission stated in reference to this neighboring tribe immediately north of petitioner tribe that:

The situation on San Juan Islands, in general, is not completely clear * * *. The Lummi villagers * * * gathered seafoods on beaches from Birch Bay to Samish Bay. The northern area they shared with Semishmoo and Sannish villagers, the interior with Nooksack and Duwhawha and the Chuckanut and Samish Bays with large numbers of other people.

The Commission stated at page 551 of our opinion in the Lummi case:

The ethnological data indicated that other Indians also used the various islands, especially San Juan and Lopez * * *. The non-exclusive use of outlying areas is well illustrated by the common usage of fishing areas, especially about Point Whitehorn and Point Roberts. The same pattern is evident on Lopez and San Juan Islands.

As we have observed in the prior Nooksack case, Docket No. 46; Lummi case, Docket No. 110; Muckleshoot case, Docket No. 98; and Skallam case, Docket No. 134, involving fish-eating Indians in near proximity to the petitioner tribe, there was a natural tendency to share with their Salishan speaking neighbors. This does not in the case at hand deter us from the conclusion that the Samish Tribe exclusively used and occupied the land bodies as described in our Finding No. 12.

It is the opinion of this Commission that the Samish Tribe of Indians, Petitioners herein, are the descendants and successors in interest of the Samish Indians who aboriginally and at the time of the negotiation of the Treaty of Point Elliott on January 22, 1855, exclusively used and occupied the tracts of land described in Finding 12, and that the effective date of

the cession of said area to defendant was March 8, 1859, the date of ratification of the treaty by the Senate.

With reference to petitioner's contention that we should find a merger of the Samish and Nu-wha-ha Indian Tribes, we are unable to so find from this record. The mere fact the Nu-wha-ha Indians were sometimes called "Stick-Samish" and that the latter's chief signed the Treaty of Point Elliott as a representative of the Samish does not show a merger of these tribes. On the contrary, it is well established that the two tribes spoke distinctly different dialects and hostilities occasionally existed between them. The Samish area was clearly delineated from them for the most part, especially since the Samish lands were almost entirely surrounded by natural water boundaries.

Any question of credits or offsets by reason of reservation set aside by defendant under the treaty and any other lands which might have been allotted, patented, or otherwise, acquired by petitioners or their ancestors shall be the subject of further hearings and evidence, along with the questions of consideration paid under the terms of the treaty, value of such lands as of March 8, 1859 and other offsets to which defendant may show itself entitled under the Indian Claims Commission Act.

Edgar E. Witt
Chief Commissioner

We Concur:

Louis J. O'Marr
Associate Commissioner

Wm. M. Holt
Associate Commissioner