

BEFORE THE INDIAN CLAIMS COMMISSION

THE QUINAIELT TRIBE OF INDIANS, on its )  
own behalf; QUINAIELT TRIBE OF INDIANS )  
on behalf of the QUEETS TRIBE OR BAND )  
OF INDIANS; QUEETS TRIBE OR BAND OF )  
INDIANS, on relation of and represented )  
by Harry Shale, )

Petitioners, )

Docket No. 242

v. )

THE UNITED STATES OF AMERICA, )

Defendant. )

Decided: December 1, 1958

Appearances:

Kenneth R. L. Simmons, Glen A. Wilkinson, Donald G. Gormley, John M. Murray, Attorneys for Petitioners.

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.

Petitioners herein, The Quinaielt Tribe of Indians, on its own behalf, and on behalf of the Queets Tribe or Band of Indians, the latter also on relation of and represented by Harry Shale, timely filed this suit pursuant to the Indian Claims Commission Act of August 13, 1946 (60 Stat. 1049), 25 U.S.C. par 70). Petitioners seek additional compensation for lands ceded by the Quinaielt and Queets Indians under the terms of the Treaty with Quinault, etc., 1855, (12 Stat. 971; II Kappler 719). Petitioners allege that

Quinaielt and Queets Indians held aboriginal possession, use, and occupancy of said lands and charge that defendant obtained same by such treaty cession for a grossly inadequate and unconscionable consideration. In the alternative, petitioners charge defendant with unfair and dishonorable dealings in obtaining this cession of such lands. Petitioners allege said lands contained approximately 814,080 acres.

This Commission at the beginning of the trial of this case approved stipulations as presented by counsel for petitioner and defendant, and established the following order of procedure:

1. This case, Docket 155, shall be tried and heard jointly with Docket 242, the Quinaielt Indian Tribe, et al., vs. The United States. All evidence adduced in either of such cases shall be available in the other.
2. Defendant's original answers shall be considered answers to all amended petitions as may be filed in either of said cases.
3. The issues for determination in this stage of these proceedings shall be limited to the questions of (1) capacity and rights of petitioners to maintain this action under the Indian Claims Commission Act (60 Stat. 1049) and, (2) what aboriginal areas, if any, did petitioners' ancestors exclusively use and occupy. (Tr., pp. 3-6)

The defendant admits that a "so-called Quinaielt Tribe and other tribes and bands entered into a treaty, known as the Quinaielt Treaty, with the United States, on July 1, 1855 or January 25, 1856 (12 Stat. 971, II Kappler 719)." (Def. Ans., par. 9), sometimes called the "Treaty of Olympia."

Although it was not until 1855 when Territorial Governor Isaac I. Stevens entered into treaty negotiations at a council held between the United States and those tribes and bands living along the Pacific coast between Gray's Harbor and Cape Flattery, that it was then and there learned that some Indians residing there were different from their Salishan speaking neighbors. However, the Quinaielt Indians were recognized by Governor Stevens from the beginning of treaty negotiations. There was a distinct dialectical difference in the speech of two young observers from the other Indians present. Governor Stevens directed further investigations be made and learned that these previously unknowns were Chimakuan speaking Indians residing mostly at the mouths of the Kwilleyute and Hoh Rivers. (Our Fdgs. 1 and 3, Docket 155, Quileute Indians)

The natural barrier of their coast line without land-locked harbors substantially prevented any further extended white contact with them until long after their treaty cession. As late as the twentieth century there were only well defined trails and the open coast was harrassed by frequent storms making travel difficult. This area is one of the largest unspoiled areas of natural scenery in the United States. (Pet. Ex. 124, p. 12)

The recognition of the petitioner tribe as an identifiable group of American Indians is established by the Government records introduced in evidence in this case. Furthermore, the Quinaielt

and Queets Indians were recognized by the defendant in the Treaty with the Quinaielt, etc., 1855, sometimes called the Treaty of Olympia (cit. id.), in the title, preamble, and among the Indian signatory parties of the Quinaielts, Queets, Hohs, and Quileutes.

Same record of the census of their membership has been reported by the Government's Indian agents and tribal officers from treaty times to recent decades. The Interior and Insular Affairs Committee of the House of Representatives (82d Congress) authorized and directed a study of the Bureau of Indian Affairs. On page 91, the Quinaielt are described in the report of this investigation, as follows:

#### Quinault Reservation

#### 27. Appraisal of Competence

##### General

- A. All of the Quinault Indians are competent to manage their affairs independently of the Bureau; 370 live on the reservation and 1,500 off the reservation in white communities and have timber allotments on the reservation.
- B. A majority of the Indians have already been absorbed into white communities. The few hundred still living on the reservation earn their livelihood with very little assistance from the Bureau in the form of services.

##### Individual

- A. A number are self-employed as fisherman. Two or three own and operate small restaurants. Most are fisherman and wage earners working in logging camps on and off the reservation, in sawmills and on farms off the reservation. Some are contract loggers.

It is also noted that a considerable number of Indians other than the descendants of the aboriginal Quinaielt Tribe were placed on this reservation. The Quinaielt Reservation is entirely situated upon part

of their ancestral lands. (Def. Ex. 102 and Pet. Ex. 73) Governor Stevens experienced less difficulty in obtaining the assent of the Quinaielts to the proposed treaty cession, primarily, according to James G. Swan, because the Quinaielts understood that they would not be removed from their lands, but could remain on certain of their lands to be designated as a reservation for the Indian groups set out in the treaty.

Defendant's plea of res judicata is not well taken for the reasons we expressed in the companion case to this case, namely, Docket No. 155, Quileute, et al., wherein we overruled the same plea, urged also by defendant in this case, and cited numerous opinions of a like result where defendant urged the Duwamish judgment (No. F-275, 79 C. Cls. 530) in bar of petitioners' claims.

By order entered February 12, 1953 we permitted petitioners to amend their petition, which amendment included amendment of their boundary description. Such boundary description contained in paragraph 6 of their petition, as amended, reads:

"That upon and prior to July 1, 1855 and March 8, 1859, from time immemorial, petitioner owned and occupied a portion of the lands and territory contained within the present continental borders of the United States as described in Article 1 of said treaty of 1855--said portion being described, according to geographical landmarks as then known as follows, to wit:

'Commencing at a point on the Pacific Coast, at the southwest corner of the lands owned or occupied, in aboriginal times, by the Quileute Tribe of Indians, namely, at the mouth of the creek later named Steamboat Creek and running easterly with

and along said creek to its source; thence easterly along the ridge dividing the watersheds of the Queets and Hoh Rivers, to the point where said dividing ridge intersects the crest of the coast range of mountains; thence southerly with said crest of the said range of mountains to the point where they intersect the dividing ridge between the Chehalis and Quinault Rivers; thence westerly with said ridge to the Pacific Coast; thence northerly along said coast to the place of beginning.'"

The foregoing amendment of boundary description by petitioners was urged, and allowed by this Commission, to permit them to separate and distinguish their lands claimed from those claimed by Quileutes, et al., in Docket No. 155. The original petition had included the whole of the lands described in the 1855 treaty cession executed not alone by the Quinaielt but also including Quileute Indian parties, et al.

On December 23, 1955, we permitted petitioners to file their second amended petition, including amendment of their aboriginal boundary claims to include the Copalis River areas on the south. (See Amended Petition filed Dec. 23, 1955, par. 7), describing their aboriginal boundaries, as follows, to wit:

Commencing on the Pacific Coast at the mouth of Steamboat Creek; thence easterly along the crest of the watershed of the Hoh River to Mount Octopus; thence easterly along the crest of the watershed between the Hoh River and Clearwater River; thence easterly along the crest of the watershed between the South Fork of Hoh River and Queets River to the crest of Mount Olympus; thence easterly to Bear Pass; thence southeasterly along the crest of the watershed of the Olympic Mountains to Mount Anderson; thence southwesterly along the crest of the watershed between Quinaielt River and Skokomish River; thence along the crest of the watershed of the Quinaielt River and the Humptulips River; thence southwesterly along the crest of the watershed between Chepalis or Copalis River

and Humptulips River to a point on North Bay approximately 3 miles west of the mouth of the Humptulips River; thence westerly and southerly along the coast of North Bay to Point Brown; thence northerly along the Pacific Coast to the place of beginning.

These petitioners maintain they were defenseless, dependent, ignorant American Indians at the time of the treaty cession of their lands, July 1, 1855. Petitioners further assert they were uninformed, without knowledge of the nature and legal effect of such treaty or of the market values of their lands and relied at all times upon the fairness and honesty of the United States and its agents with implicit confidence. Under such alleged circumstances they, together with the Quileute Tribe of Indians, ceded their lands to defendant for the unconscionable total sum of \$25,000.

Alternatively, petitioners allege such cession of their lands was procured by duress in that defendant's treaty representative and agents lead them to believe they had no alternative but to sign such treaty for the consideration therein expressed.

There is no evidence of any treaty language or Act of Congress which expressly creates a fiduciary relationship between defendant and petitioners. We conclude, therefore, that such legal relationship of guardian and ward, or other duties and obligations of a fiduciary nature as a trustee were not created between the defendant and these Indian parties, and has never existed.

In the opinion of Gila River Pima Maricopa Indian Community vs. United States, 140 Fed. Supp. 776, the applicable principle here was clearly stated.

Whether or not the legal relationship of guardian and ward exists between a particular Indian Tribe and the United States depends, we think, upon the express provisions of the particular treaty, agreement, executive order, or statute under which the claim presented arises.

The same principle was again asserted by the Court of Claims in The Sioux Tribe of Indians, et al. v. United States, 146 Fed. Supp. 229. The same principle was controlling on the fiduciary question in the opinion of this Commission in Omaha Tribe of Nebraska, et al. v. United States, 6 Ind. Cl. Com. 68.

We further note in passing upon petitioners' alleged grounds of recovery that whatever may have transpired in the minds of the respective signers to the treaty cession, no evidence of acts or other conduct amounting to duress is shown from the journal and other accounts of the negotiations. However, the petitioners' allegations of right of recovery on the basis of unfair treatment and/or unconscionable consideration may or may not be established by reason of substantial disparity, if any, between the \$25,000 consideration and the market value of the land when ceded to defendant.

There is no doubt this record establishes that the Quinaielt and Queets Indians spoke a common language distinct from their neighbors, that they constituted a land-using unit of American Indians subsisting upon fish, roots and berries along the environs of the Quinault and Queets River in pre-treaty times.

The principal fact issues arise from the aboriginal boundary evidence in this cause. Petitioners' west boundary was the Pacific

Coast. Their north boundary was generally defined by the territory occupied by the Hoh River Indians and is readily capable of determination.

However, determination of three portions of the entire area claimed by petitioners to have been exclusively used and occupied by them in aboriginal times is difficult. The south boundary, where petitioners claim areas which overlap those claimed by the Chehalis in Docket 237, also the area boundary on the east near the Olympic Mountains is difficult of determination, as is the heavily forested areas upland and between the river valleys of the Queets, Quinault, and Clearwater Rivers. There is no question but that the Quinaielt and Queets Indians lived, fished, hunted and gathered roots and berries in these rivers and the valleys which bear their names. Their winter lodges, like those of their neighbors on the north, were concentrated at the mouths of their respective salmon-bearing rivers from whence came the bulk of their subsistence.

The controverted overlap area claimed by petitioners, and by their Chehalis neighbors to the south in Docket 237, constitutes that area or tract of land generally circumscribed by the north boundary of the Copalis River watershed on the north and by the north boundary of the watershed of the Humptulips River on the south, and being a parcel of land extending from a broad width of six or eight miles at the Pacific Coast, then rapidly diminishing to a narrow width and stretching some forty miles or so inland and northeastward to a sort of apex at the headwaters of the Humptulips River, as same are more particularly described in the respective petitions in Dockets Nos. 237 and 242.

In discussing this problem petitioners candidly state such conflict arises because of the Chehalis claim "that the Copalis Indians are a band or subdivision of the Chehalis Tribe." We agree with this definition of the problem as related by petitioners at page 49 of their brief. In other words, for the purpose of deciding the central question of the aboriginal boundaries of petitioners that is before us, that such issue must turn on the tribal or other identity of the aborigines who are shown to have used and occupied the land here in question.

Assuming, without deciding, that all of such disputed area or tract of land was used and occupied by Copalis Indians exclusive of Hump Tulips, Wynoochees, Hoquiam and/or Chehalis Indians in pre-treaty times, the further finding that such Copalis Indians were some part of the Quinaielt Tribe must be made before petitioners can establish Indian title to same. (See Finding 12)

In support of this proposition, inferentially posed by petitioners on page 49 of petitioners' brief; that Copalis Indians were part of their Quinaielt Tribe, petitioners cite, first, Gibbs' report that the Quinaielt area was located "coast from Gray's Harbor northward." We note the caption of such quotation was taken from a table of tribes and bands which Gibbs entitled "Estimate of Indian Tribes in the Western District of Washington Territory - January, 1854" and also under "Remarks" Gibbs writes specifically "estimate" opposite "Quin-aik & C." Furthermore, this date is a year earlier than Gibbs' visit with the treaty party to the area in question. The "estimate of Gibbs is both general in character and vague as to "&C" description of tribes and bands. This is insufficient to document their aboriginal south (or any) boundary.

Secondly, petitioners quote Swan that "certain deserted villages in the Copalis area arose from attacks on the Copalis by the Chehalis." This does not establish the Copalis as part of the Quinaielt tribe, nor does the account of Swan meeting two sub-chiefs of the Quinaielt in the Copalis area establish a tribal relationship or exclusive use and occupancy of this disputed area by Quinaielt Indians.

Undoubtedly, there was great similarity both in culture and language of the Copalis and Quinaielt. Such likeness existed between the Copalis and the Chehalis and many other fish-eating Salishan speaking tribes and bands of Indians west of the Cascades, such as the Humptulips, Satsops, and those of the Wynoochee and Hoquim Rivers, yet such evidence does not establish sufficient ties of blood, subsistence, and social unity to identify all of these as one tribe of Quinaielt Indians. In our Finding 6 we have set out the views exchanged between Dr. George Gibbs and James G. Swan where a contrary view was expressed, listing the Copalis as a separate group from the Quinaielt Indians. In deference to such respected authorities who had personal contact with the Indians of the Northwest Pacific Coast, we have excluded the area of the Copalis River watershed from the aboriginal boundaries of the Quinaielt in Finding 13.

Aside from the considerations offered by the early and modern ethnologists on the identity of Copalis Indians, the land description contained in the treaty with the Quinaielt, etc., 1855 (cit. id.) while somewhat ambiguous and general in its boundary calls, does not support

petitioners' contention that the Copalis River watershed be included in Quinaielt territory, viz: "with the dividing range between the Chehalis and Quin-ialt Rivers" does not expressly delineate the confines of the intermediate Copalis River watershed as north or south of such "dividing range." But should we resolve this boundary question upon a construction of the treaty language we would be constrained to decide that the peaks north of the east-west flowing Copalis River, which are three or four hundred feet higher than those south of this river would place the Copalis River valley as outside Quinaielt territory.

Based upon our careful consideration of petitioners' contentions and evidence introduced to support their claims to the Copalis River watershed including the treaty evidence, the evidence of the subsistence, use and occupancy areas of Quinaielt Indians, and the evidence of identity of the aboriginal inhabitants of the Copalis River area, both documentary and by expert testimony, is insufficient to establish petitioners' claim to the Copalis River watershed area.

Petitioners also include in their claim of lands exclusively used and occupied by Quinaielt and Queets Indians a sizeable portion of the Olympic Mountains within their east boundaries. We have noted in the S'Klallam, Skokomish, and the companion Quileute cases that this portion of the Olympic range was used by all the tribes and bands of Indians to hunt deer, elk, and bear. Ethnologist Erna Gunther and petitioners' expert, Dr. Ronald Olson, have noted that this area was a free range for any who would use it. (Finding 13)

The third area controversy concerns the upland and "non-village areas." Defendant urges that petitioners occupied and used only their village-site areas; that all Indians of this region had, at most, a very loose sense of property ownership and no concept of land boundaries whatever outside their respective villages.

In this connection defendant contends that the ease of fishing kept them from engaging in the arduous pursuit of game; that the root and berry gathering areas were free to all who would use them and the forests of this area were among the most dense in the world, traversed only by a limited use of game trails. (Dft. Req. Fdg. 19) It is a fact that the major portion of their livelihood and sustenance was drawn from the sea and the rivers. But they also depended upon roots and berries from the prairies and supplemented this diet with elk, deer and bear killed or driven from the upland areas into the prairies and river valleys. These were the primary purposes for which Indians of this region used land in aboriginal times. This constitutes use and occupancy in the sense of "Indian title."

Defendant contends that these non-village areas were "free-use areas" to all Indians and that such use and occupancy was not exclusive as to Quinaielt and Queets Indians since they had no concept of land ownership. It is sufficient to observe that the Government men experienced considerable difficulty and delay in removing Indians of adjacent areas and like culture from their ancestral river valleys onto Indian reservations.

In our Finding 13 we have defined the natural boundaries encompassing the several use areas of the Quileute and Hoh Indians, including not only their winter villages but also the rivers, valleys, and prairies used and occupied by them.

Thus, we find and conclude from the record as a whole and upon the Findings of Fact herein made that the Quinaielet Tribe of Indians, including their subdivision the Queets Indians, petitioners herein, were aboriginally a tribe of American Indians that had been recognized and treated in treaty cession and otherwise as a tribal entity (Finding 1); that exclusive use and occupancy from time immemorial of a specific and definable area of land by them has been proven (Finding 13); that petitioners are the successors in interest of the original occupants and users of said land (Finding 3) and entitled to maintain this action; that all the controversial issues now being considered are resolved in favor of petitioners, except as to area claimed.

The treaty ceding petitioners' lands to the defendant was ratified by the United States Senate on March 8, 1859. Such ratification date constitutes the date of taking by defendant and therefore the date on which the value of the acreage involved is to be determined.

Further hearings will be held for the determination of the acreage involved and the value of said land at the time of the taking and the rights retained in said land by petitioners or their ancestors.

s/ Edgar E. Witt  
\_\_\_\_\_  
Chief Commissioner

We concur:

s/ Louis J. O'Marr  
\_\_\_\_\_  
Associate Commissioner

s/ Wm. M. Holt  
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