

BEFORE THE INDIAN CLAIMS COMMISSION

THE SPOKANE TRIBE OF INDIANS, suing)
on its own behalf and on behalf of)
THE UPPER, MIDDLE, AND LOWER BANDS)
OF SPOKANE INDIANS or THE UPPER)
SPOKANE, MIDDLE SPOKANE OR LOWER)
SPOKANE BAND OF INDIANS, or any one)
or two of them alternatively,)

Petitioner

v.

THE UNITED STATES OF AMERICA

Defendant.

Docket No. 331

Decided: April 17, 1961

Appearances:

Ernest L. Wilkinson, with whom were John W. Cragun, Glen A. Wilkinson, Robert W. Barker, Donald C. Gormley and Francis M. Goodwin, and H. Lawrence Garrett, Jr., Attorneys for petitioner..

John D. Sullivan and Ralph A. Barney, with whom was Mr. Assistant Attorney General Perry W. Morton, Attorneys for Defendant.

OPINION OF THE COMMISSION

Chief Commissioner Arthur V. Watkins delivered the opinion of the Commission.

The subject area claimed under original Indian title by petitioner in its own behalf and on behalf of the Upper, Middle and Lower bands of Spokane Indians or any one of them alternatively, is located in northeastern Washington. Petitioner is an organization formed by

residents of the Spokane Indian Reservation which is situated within the claimed area. It has a constitution and by-laws approved by the Secretary of the Interior. Other persons of Spokane blood reside upon other Indian reservations near the claimed tract.

Defendant admits petitioner may sue as an identifiable group of Indians but it denies that petitioner is entitled to recover for any alleged interest in land. It claims the pre-reservation Spokane Indians were not a single land-using unit but an ethnic or linguistic group of three separate divisions or independent tribes whose political basic units were a village or local band. It relies upon the testimony of its ethnologist Stuart Chalfant who made a study of all available documentary data concerning the Spokanes and who, in turn, relies upon various documents recounted in his written report which is identified herein as Defendant's Exhibit No. 67.

After a careful study of the entire record, however, we are convinced the evidence reflects the form of government existing among the Spokane Indians as early as 1848 was that of an over-all unifying council consisting of a head chief and several lesser chiefs; that the Spokanes considered themselves one people, made common use of their hunting and gathering grounds and formed but one land holding entity; and that until about 1881 the defendant's agents and representatives so regarded them. This is apparent from statements made by a number of ethnologists, anthropologists and others who have studied or had personal contact with the Spokane Indians in earlier times. James M. Teit whose research among the Spokanes occurred about 1906, said neighboring tribes considered them one

people, a tribe with each band under a chief and assistant chiefs; that the chiefs formed a council for administering the major tribal affairs (Pet. Ex. 5, p. 374). Mr. Chalfant referred to them as an ethnic group on a socio-economic basis, with a sense of belonging together, having blood ties and interfamily relationships (Trans. p. 310), and cited Teit's report that a head chief functioned during war or while hunting (Def. Ex. 67, p. 69-70). Hubert Howe Bancroft in his "Native Races" published in 1886 said they were a tribe of eight bands (Pet. Ex. 15). Father DeSmet in 1842 described them as several small tribes of one nation, numbering nearly 800 souls, living on the produce of their own land (Pet. Ex. 18), Horatio Hale who went through the region in 1838-42 as philologist and ethnologist for the United States Naval Expedition under Commander Charles Wilkes, said the Spokane Indians were a tribe; that they roamed in small bands but joined together for mutual support against their enemies, the Pikani or Blackfeet (Def. Ex. 49). The official report of George Gibbs on behalf of the Stevens Survey party which traversed the region in 1853 refers to them as a tribe (Def. Ex. 57; Pet. Ex. 7). The earliest known report of them was made by Ross Cox, a trader who wintered in this region in 1812-1813 and who wrote of the Spokanes as "a quiet, honest, inoffensive tribe" (Pet. Ex. 127).

Petitioner's witness, Dr. Anastasio, testified that he had documentary proof of a tribal council held by the Spokanes in 1848 (Trans. p. 178) and said they were a tribe with a head or over-all chief and several village chiefs or headmen. Petitioner's witness, Dr. Ray, worked with the Spokanes in the 1930's and early 1940's. He had an exceptionally good opportunity for late research, having visited petitioner Indians as often as

once a week while serving for five months during 1940 as Director of Indian Emergency Conservation Work, when he met virtually every member of the organization. He testified the early day head or over-all chief was invariably known as The Raven and belonged to the Lower Spokane group or band; that a tribal council was held twice a year; that any Spokane might appear before it. He identified the Spokanes as a tribe ethnically, culturally, and politically (Trans. p. 107-111).

There are a number of references to the three divisions of Spokane Indians as "bands" and to Garry as principal chief of the Spokanes. These suggest an over-all tribal organization existed, and included James Mooney's 1896 "Ghost Dance Religion" (Pet. Ex. 20); Inspector E. C. Watkins' official report of August 23, 1877; the annual reports of the Superintendent of Indian Affairs for 1854 and 1851; Governor Stevens' letter of June 3, 1856 to Lieutenant Colonel Craig; Agent G. A. Paige's letter to Superintendent Waterman on July 1, 1867, and the annual reports of the Indian Agent at Colville, Washington, dated August 31, 1882, August 15, 1883, and August 12, 1886 (Pet. Exs. 144; 51(3); 166; 136; 52; 76; 135-A; Def. Exs. 3(1); 13; 14; 15).

There are also earlier references to the Spokane bands as independent tribes, but we think it well substantiated that any such separation existed, if it existed at all, in earlier times and that by the middle of the 19th century the Spokanes were united under an over-all tribal council form of government with a head chief and lesser chiefs, and comprised a tribe within the meaning of the Indian Claims Commission Act.

The land involved herein was originally Oregon Territory. It appears many whites settled in that territory before Indian title was extinguished

because of a popular belief that the Donation Act of 1850 had opened it to settlement (9 Stat. 323; 10 Stat. 172; Pet. Exs. 43, 44, 47, 48, 55, 61). By 1855 conflict existed between the two races and the Governors of the Territories of Washington and Oregon were authorized to extinguish Indian title to all land in those Territories located east of the Cascade Mountains. (Pet. Ex. 50). They procured cessions from a number of tribes south and east of the Spokane Indians, but the program was interrupted by the Yakima outbreak of 1855, and the Spokanes were never treated with (Def. Ex. 67, p. 34; Def. Ex. 33; Pet. Exs. 136, 137-A).

The record discloses that by 1858 the Spokane Indians were anxious to cede part of their land. They were envious of treaty annuities paid neighboring tribes, resentful of defendant's failure to treat with them and of white traffic through their country which had increased materially upon discovery of gold in northwestern Idaho and about Colville, Washington. Their seeming neglect by the defendant led them to forbid the passage of troops through their country in 1858. When Colonel E. J. Steptoe started north of the Palouse River on his way from Walla Walla, Washington, to Colville, Washington, his forces were attacked and routed by the combined forces of Palouse, Coeur d'Alene and Spokane Indians. Shortly thereafter, on September 25, 1858, the Spokanes entered into a peace treaty which specified that it also extended to the Palouse Indians, whereby whites were granted free passage through Spokane country, without, however, designating boundaries. (Def. Exs. 26; 67, p. 36-9; 64(3)).

Thereafter a number of councils were held with the Spokanes but no attempt was made to procure a cession from them. As a means of pre-

-serving the peace and to create a home for all the non-treaty tribes in northeastern Washington, the Colville Reservation was established by Executive Order on April 9, 1872. It was relocated July 2, 1872, north and west of the Columbia River (Pet. Exs. 77, 78, 79, 80; I Kapp. 916). Both sites were outside Spokane territory and the Spokane Indians refused to leave their homes, fisheries and root grounds or sever tribal relations to go upon it, or to become citizens and take out individual homesteads or land claims as urged by defendant (18 Stat. 402, 420; Def. Ex. 37; Pet. Exs. 173, 84, 86). Many of the few individual Spokanes who did attempt to establish claims were ejected from their lands by whites.

At a council held August 16, 1877, between Indian Inspector E. C. Watkins, General F. Wheaton and Captain M. C. Wilkinson on part of defendant, and the Coeur d'Alene, Pend d'Oreille, Chawalah, Okanagan, Colville and Palouse and Spokane Indians, an instrument providing that the Spokane Tribe would move upon a described tract by November 1, 1877, was executed by six members of the Lower Spokane Band. The described tract extended north from the Spokane River between the Columbia River and Chamokane Creek to a line extending from the mouth of Numchin Creek to the headwaters of Chamokane Creek, and the Lower Spokane occupied that area. The Palouse Indians by separate agreement agreed to either move to this tract or to the Coeur d'Alene Reservation by November 1, 1877. Neither instrument called for cession of lands or payment of consideration, and neither was presented to Congress for ratification (Def. Ex. 67, p. 44-8; Pet. Ex. 96).

It is also disclosed that the Army forbade settlements in the south portion of this tract in anticipation of an Indian reservation there. (Pet. Ex. 174; I Kapp. 925). On January 18, 1881, an Executive Order

in less detail on Petitioner's Exhibit No. 160 and has noted the sites of claimed villages and camps. Nowhere has he indicated occupancy dates for these sites. The village at the mouth of Hunters Creek is said in his 1936 publication to be "a small winter camp of three or four families." Dr. Ray's Spokane-Colville boundary is substantially the same as testified to by him before this Commission in Docket No. 181. (See Trans. and Pet'rs. Exhibits 532-4, Dkt. 181.)

Defendant's witness, Stuart Chalfant, who also testified in Docket No. 181, testified that his ethnological field work with the Spokane Indians disclosed they hunted and controlled the mountainous area northwest of Rathdrum Prairie (Def. Ex. 67, p. 88; Pet. Ex. 160-A, Map 7); that the Sampoil and Nespelen hunted in the Huckleberry Mountains (Def. Ex. 47, p. 90); that the Kalispel dug bitterroot near Hilyard, Washington, (Def. Ex. 67, p. 91), and that the area which was used by the Spokane Indians more than by any other Indians was bounded on the north by a line commencing near Hunters, Washington, and running easterly along the divide between the Colville and Spokane Rivers. In marking this line on Defendant's Exhibit No. 71 he labeled the enclosed area as "Spokane Area of Exclusive Use and Occupancy."

It is curious that there are no references to Mt. Spokane, Mt. Carson or Shadow Mountain to be found in the early accounts of this region since each is an outstanding topographical feature. We are inclined to believe they would have been mentioned had they been identification points along the boundaries between the friendly tribes in this region. However, we have given careful consideration to all of the evidence before us, and particularly that referred to above, and we are of

