

BEFORE THE INDIAN CLAIMS COMMISSION

THE STEILACOOM TRIBE OF INDIANS,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 208
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: March 14, 1973

Appearances:

Frederick W. Post,
Attorney for the Plaintiff.

Joseph S. Davies, Jr., with whom was
Assistant Attorney General Kent Frizzell,
Attorneys for the Defendant.

OPINION OF THE COMMISSION

Kuykendall, Chairman, delivered the opinion of the Commission.

The plaintiff tribe in the instant case claims that the consideration paid by the defendant for its aboriginal lands, located in the State of Washington, was unconscionable within the meaning of Clause 3, Section 2, of the Indian Claims Commission Act (60 Stat. 1049, 1050).

The Steilacoom Tribe was one of nine Indian tribes which ceded lands to the United States by the Treaty of Medicine Creek (10 Stat. 1132), which was ratified on March 3, 1855. On September 21, 1962, the Commission entered its decision that as of the time of the ratification of the Treaty of Medicine Creek, supra, the Steilacoom Tribe of Indians had aboriginal title to a specific area of land on the shore of the lower Puget Sound region described in finding 19, Steilacoom Tribe v. United States, 11 Ind. Cl. Comm. 304, 319 (1962). The Commission ordered that

the case proceed to a determination as to the exact acreage contained within that area, its fair market value as of March 3, 1855, the consideration, if any, paid by the United States to the Steilacoom Tribe or Band of Indians for the ceded lands, and all other questions bearing upon the defendant's liability to plaintiff herein. Pursuant to the Commission's order of June 25, 1969, a hearing was held in Seattle, Washington, on April 13 and 14, 1971, on all of these issues.

The subject tract lies entirely in Pierce County, Washington, and is a strip of land about two miles wide and eight miles long on the southeastern shore of Puget Sound, containing 10,900 acres. The town of Steilacoom is located on the Sound nearly midway in the tract.

The evidence, as outlined in our findings of fact, discloses that the land was gently rolling and reasonably level, with occasional slopes rising from the shores of Puget Sound to elevations of 300 feet above sea level. Chambers Creek in the north and Sequallitchew Creek in the south drained the tract. Small lakes dotted the tract's southeastern boundary, giving rise to creeks which flowed through the tract. Virtually all transportation was upon water, including the eight miles of Puget Sound water frontage which provided boats with easy access to nearby islands and other settlements on the sound. After 1853 a steamship provided weekly freight and passenger service and mail delivery to Steilacoom and other ports on the sound. Fish and shell fish were plentiful. The climate was moderate, and there was an abundance of rainfall. There were no known minerals within the region.

The economy of the Puget Sound region was inextricably tied to

the lumber industry. Although in 1855 the lumber supply was thought to be virtually endless, labor was limited, and the difficulty of processing timber under crude conditions made the lumber itself expensive. To cut costs and facilitate logging, lumbermen of the northwest concentrated on timberlands located within one and one half miles of drivable water. There were forested areas adjacent to the sound and prairies on the inland side of the tract. The location of the forests was ideal for logging.

The first settlers entered the Steilacoom tract in 1850, five years before the valuation date. It was then that Lafayette Balch established the town of Port Steilacoom, which soon grew to a thriving village. The next year another town builder took up a claim about a mile away which was known as Steilacoom City. The two settlements thrived and grew together in the 1850's to become the present city of Steilacoom. By 1853 enough people had settled around the community to warrant the construction of a hotel and a store. In 1854 a church and a school were built. A large, fertile prairie area outside the town was being farmed. Plentiful fish in the water of the sound provided additional subsistence for the town settlers.

In 1853 Congress authorized construction of a military road from Steilacoom to Walla Walla. When Pierce County was formed by the territorial legislature that same year, Steilacoom became the county seat. The population of Steilacoom was 100 whites and 300 Indians, with Pierce County containing 513 persons. By 1860 the population of Pierce County had grown to 1,115.

Prior to 1855, Congress had passed public land laws to dispose of the territory or property of the United States, including land in the present State of Washington. A prospective purchaser of lands in this area in 1855 had, under various statutes, several methods by which he could acquire land then in the public domain. The Act of April 24, 1820 (3 Stat. 566), offered a minimum of 80 acres of land for \$1.25 per acre payable in cash only. Between the years 1854 and 1862 it was possible to purchase land that had been available under this act for less than \$1.25 per acre, through the Graduation Act of 1854 (10 Stat. 574). Under this act purchasers received a discount in the price of land depending upon the length of time the land had been available for acquisition.

The Preemption Act of 1830 (4 Stat. 420, as amended) was enacted to protect the claims of squatters occupying and improving public land by giving them an opportunity to purchase the land prior to public auction. The squatters could purchase the land for \$1.25 per acre under the Act of April 24, 1820, supra. Under the Oregon Donation Act of September 27, 1850 (9 Stat. 496), settlers were able to acquire a right to land in the Oregon Territory, which includes the present State of Washington. The act provided for grants to white settlers who had settled on the claimed land prior to December 1, 1850, and who had lived there for four years and improved the land for their own use. After a settler proved compliance with the terms of the act and the Government surveyed the land, a patent would be issued in the name of the settler.

Bounties, in the form of land warrants, were given to veterans of

military service as early as 1847 pursuant to the Military Bounty Land Acts and Military Land Warrant Acts (2 Stat. 728, and successor statutes). These military bounties and land warrants were transferable and often acquired at discounts up to 60%. The United States, however, accepted the warrants at face value for payment of land purchased. In 1854 the Territory of Washington was granted 46,080 acres of land for university purposes. In 1861 the territorial legislature authorized sale of this land for \$1.50 per acre.

Any determination of land dispositions immediately prior to and after March 3, 1855, is complicated by the conflicting claims of the United States and the Hudson's Bay Company. From the historical data available, it is evident that there were settlers in the Steilacoom tract who did not file at the United States land office, apparently out of fear of the powerful Hudson's Bay Company. The company alleged that its charter from the British Government gave it sovereignty over the area. It was not until the company's holdings were liquidated and title to the land clarified in the latter 1860's that all settlers felt they could acquire good title from the United States. ^{1/}

As of the date of valuation less than six percent of the tract had passed into the private ownership of American settlers. In the following 18 years, slightly more than 36 percent was sold to private owners. All of the land reported sold during this period was acquired

^{1/} See findings 5-7, 11 Ind. Cl. Comm. 304, 307-9 (1962).

