

THE CONFEDERATED SALISH AND KOOTENAI
TRIBES OF THE FLATHEAD RESERVATION,
MONTANA,

Petitioner,

v.

Docket No. 61

THE UNITED STATES OF AMERICA,

Defendant.

Decided: August 3, 1959

Appearances:

Robert W. Barker. with whom were
Donald C. Gormley and Frances L.
Horn, Attorneys for Petitioner.

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

OPINION OF THE COMMISSION

Holt, Commissioner, delivered the opinion of the Commission.

The petition in this case was filed by the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana. Petitioner, an identifiable group of American Indians duly organized under the Act of June 18, 1934, 48 Stat. 984, includes descendants of the Flathead, Upper Pend d'Oreille and Kootenai tribes parties to a treaty with the United States on July 16, 1855, 12 Stat. 975, II Kapp. 722, at Hell Gate, Montana (see Def. Req. Fdg. 1) whereby these Indians ceded, relinquished, and conveyed to the United States all their right, title and interest in

and to the country occupied or claimed by them. The area ceded is described in Finding 3 as is the area reserved for the Indians. The gross area of the cession was estimated to be some 16,400,000 acres and the area of the reserve, known as the Jocko Reservation, was estimated to be 1,256,000 acres. By stipulation of the parties the hearing in this case was limited to the question of petitioner's right to the lands claimed, the identifiability of petitioner and as to whether there was presented a common or group claim.

The case was ordered consolidated for the purpose of trial with Docket No. 154 on April 2, 1953, in which case the petitioner, the Kootenai Tribe or Band of Indians of the State of Idaho claimed to be joint owners of the lands ceded by the Treaty of July 16, 1855, to which they had not been a party. Upon completion of the proof in Docket 61, the counsel for the petitioner therein entered into a stipulation with the counsel in Docket No. 154 wherein it was agreed that petitioner in Docket No. 154 was a separate and independent band or tribe of Kootenai Indians known as the Bonners Ferry Tribe, which exclusively used and occupied certain lands in the northwestern part of the ceded area and that said tribe was not a party to, nor represented at, the Treaty of July 16, 1855. During the hearings of the evidence in Docket No. 154, upon the request of counsel, Docket No. 61 was separated therefrom, there being no objection from the other parties. (Tr. 576) This Commission has determined in 5 Ind. Cl. Comm. 456 that the Bonners Ferry Kootenai Band, petitioner in Docket No. 154, did exclusively use and occupy certain lands (Finding 14 herein) in the

northwestern portion of the cession of 1855, and that said band was not a party to, nor represented at, the Treaty of July 16, 1855. Petitioner herein filed with this Commission a disclaimer to the lands in the extreme northwestern portion of the ceded area claimed by the Bonner's Ferry Kootenai. The area so disclaimed is estimated to contain 1,396,000 acres. A disclaimer was also filed to certain lands in the west central part of the ceded area claimed by the Lower Pend d'Oreille, or Kalispel Tribe, before this Commission in Docket No. 94, estimated to contain 787,410 acres. Eliminating the disclaimed areas and the reservation area petitioner now contends the total area of land allegedly "owned by petitioner under original Indian title" and ceded to defendant by the 1855 treaty amounted to 12,806,000 acres of land.

In the petition filed in this action before the Commission it is alleged that "From time immemorial * * *, petitioner and the members of petitioner tribe held, occupied, possessed and owned the land and territory * * *" ceded by the Treaty of July 16, 1855. The petition was amended following the hearing to eliminate from the claimed area, as described in the treaty, the areas disclaimed by petitioner. As previously pointed out petitioner herein is the organization known as the Confederated Salish and Kootenai Tribes of the Flathead Reservation, which was duly organized under the Wheeler-Howard Act of June 18, 1934. Defendant admits that petitioner is at the present time an identifiable group of Indians organized under the Indian Reorganization Act of June 18, 1934 and has among its membership descendants of the three tribes, Flathead, Upper Pend d'Oreille and Upper Kootenai. Defendant contends,

however, that the only claim asserted in the petition is a claim by the named petitioner; that there are no separate claims asserted on behalf of the Flathead, Upper Pend d'Oreille or Upper Kootenai tribes of Indians; and that petitioner has submitted no evidence in support of a joint claim by these three groups. Defendant further contends that petitioner is not the successor to any separate claims of the Flathead, Upper Kootenai or Upper Pend d'Oreille tribes. Defendant admits that petitioner is recognized by the Secretary of the Interior as having authority to represent the Indian tribes located on the Flathead Reservation in Montana.

Petitioner contends that it has authority to present the claim; that joint use by the three tribes and their confederation makes this a joint claim; that defendant by the Hell Gate Treaty of 1855 and ratification thereof by Congress created a Confederation as a legal entity; that petitioner, in any event, is entitled to recover on behalf of its constituent tribes; and that defendant recognized petitioner's Indian title.

We will first consider defendant's contention that the only claim asserted is a claim by the named petitioner. It is defendant's position that, although petitioner being a presently identifiable group has the right to present a claim, petitioner did not have aboriginal title and therefore does not have a valid claim. Defendant's stand on this point is bottomed on the grounds that (a) petitioner as such never held Indian title to any lands, (b) petitioner is not the successor in interest to the three tribes parties to the 1855 treaty and (c) petitioner did not make any claim of ownership by any of the three individual tribes. A

presently existing identifiable group of American Indians has the right to present a claim before this Commission on behalf of its constituent tribes, bands or groups. Clyde F. Thompson, et al., v. United States, 122 C. Cls. 348; Confederated Tribes of the Colville Reservation v. United States, 4 Ind. Cl. Comm. 151; Peoria Tribe of Oklahoma v. United States, 4 Ind. Cl. Comm. 223; The Northern Paiute Nation, et al., v. United States, 7 Ind. Cl. Comm. 381. For jurisdictional purposes only it is immaterial to this Commission whether the identifiable group presenting the claim was the land-using entity or whether the land-using entities were the constituent tribes, bands or groups thereof. The Commission, however, has been careful to point out that the presently existing identifiable group does not necessarily become the successor in interest to its constituent units and that proof is necessary to show the existence of descendants of the tribe, band or group for which claim is made. Peoria case and Colville case, supra. A present day identifiable group, such as petitioner, may be the successor in interest to the claims of its constituent tribes. This may be possible where there was a merger or consolidation of certain tribes, bands or identifiable groups into a single land-using entity prior to a deprivation or cession of the lands aboriginally used and occupied by them. Of course it follows that the present day identifiable group must be traceable to the land-using entity. The present day identifiable group may also be the successor in interest if it can trace itself back to a merger or consolidation of tribes, bands or identifiable groups which took place by treaty at the time of the cession of the lands and it is

clear by the terms of the treaty that the intent and purpose was to create a new entity which thereby in law and fact became the successor in interest to the formerly separate tribes, bands or groups.

Petitioner herein is the successor in interest to the claims of the Flathead, Upper Pend d'Oreille and Kootenai Indians parties to the 1855 treaty. Prior to the 1855 treaty the Flathead and Pend d'Oreille Tribes were separate tribal entities and the Agiyinik, or Libby-Jennings Band of Kootenai Indians was an independent band (Finding 6 and 7). By the terms and provisions of said treaty these three, closely allied tribal entities agreed to consolidate on the lands reserved from the ceded area under the common designation of the Flathead Nation with Victor, the head chief of the Flathead tribe, to be head chief of said nation (Finding 3). By the terms of the Treaty the United States agreed to pay to the newly created entity \$120,000.00 to be expended under the direction of the President over a number of years, to provide certain facilities such as blacksmith and carpenter shops and to furnish the services of certain employees to the consolidated tribes for a given number of years. Following the treaty the three separate tribes all eventually, for the most part, went upon the reservation and it is admitted that their descendants today are upon said reservation and that petitioner is recognized as having the authority to represent them.

As previously stated petitioner contends strongly that there was joint use by the three tribes of the claimed area and that their confederation makes this a joint claim. Defendant urges that the evidence shows the three tribes had separate areas and that no claims have been

filed on behalf of the separate tribes. The evidence, as set forth in detail in the findings of fact herein made and as will be discussed hereinafter, clearly shows that up to the time of the treaty of 1855 there existed separate tribes exclusively using and occupying their own respective areas. The fact that the petition sets forth a claim to the ceded area in which it is alleged (Par. 4) that "petitioner and the members of petitioner tribe held, occupied, possessed and owned" the lands and thus implies joint ownership is not sufficient reason for holding petitioner is not entitled to recover where petitioner's predecessors in interest held the lands separately. Cf. Kootenai Tribe or Band of Indians v. United States, 5 Ind. Cl. Comm. 464, 465-467. Although the petition herein would seem to infer joint use there are certain allegations which point to lands separately used and occupied by the respective tribes (Petition, par. 7).

The findings in this case completely cover the historical, ethnological and documentary material dealing with the Flathead, Upper Pend d'Oreille and Kootenai tribes which ceded the lands to the Government by the 1855 treaty. These tribes have resided in western Montana, west of the Rocky Mountains from time immemorial.

Linguistically, the Flathead and the Upper Pend d'Oreille are of Salish stock while the Kootenai form a "linguistic island" speaking a language which has not been related to any other stock. Culturally, these Indians belong to the Plateau culture area but being the nearest tribes to the Plains area they acquired many plains characteristics after the acquisition of the horse and the resulting dependence on the buffalo hunt on the plains, which placed them in direct contact with the plains tribes

such as the Blackfoot, Crow and Assiniboine. (Fdg. 5)

The Flathead Tribe in historic, pre-treaty times had been a single political entity. The Upper Pend d'Oreille, or Pend d'Oreille, as distinguished from the Lower Pend d'Oreille, or Kalispel, had also been a separate and distinct political entity during the period in question. The Kootenai Tribe, so-called, on the other hand, never, in the historic period, existed^{as} a single tribe with the capacity to represent all Kootenai Indians or to hold Indian title to lands as such. The Kootenai consisted culturally of two divisions, the Upper Kootenai in the United States and Canada and the Lower Kootenai also located in the United States and Canada. The cultural distinction is made on the basis of the Upper Kootenai being more influence by plains traits and more dependent on the buffalo hunt while the Lower Kootenai were in less contact with the plains Indians and depended more on fishing than they did on the bison hunt. Dr. Claude Schaeffer lists seven bands of Upper Kootenai and three of Lower Kootenai. According to Turney-High, an anthropologist who made an early study of the Kootenai, the bands were independent. The Jennings band, according to Schaeffer, or the "Libby-Jennings" band, according to Turney-High (Def. Ex. 42), is the Kootenai band which held lands above Flathead Lake and it is from this band that the Kootenai Indians on the Flathead reservation descended. (Fdg. 6).

The bulk of petitioner's documentary and historical material was introduced in the form of written reports by two witnesses, Dr. Paul C. Phillips (Pet. 1), historian, who was a professor of history at Montana State University, and Mr. E. O. Fuller, (Pet. Ex. 7), an investigator of Indian

affairs. The depositions of these witnesses were introduced into evidence as petitioner's Exhibit A-1. Dr. Phillips in his report and in his testimony reviews the history of the Flathead, Upper Pend d'Oreille and Kootenai Tribes, their contacts with the fur traders, explorers, missionaries and government agents and other tribes, and was of the opinion that they had used and occupied the whole of the area claimed by petitioner in the half century before 1855. (Pet. Ex. A-1, pp 83-85). Dr. Phillips, however, was of the opinion that the Kootenai was but one tribe. He testified that the Kootenai and Flatbaws (Lower Kootenai) were the same tribe (Phillips Deposition, Pet. Ex. A-1, pp. 54 and 64). In this respect he disagrees with the other authorities of record in this case such as Turney-High and Schaeffer, anthropologists who studied the Kootenai, and with defendant's ethnologist Chalfant whose report and testimony in this case revealed the facts pertaining to the ethnological separation of the Kootenai into independent bands. Not only do these authorities recognize such a political independence but so did petitioner's counsel and defendant's counsel who both agreed in the record that the Bonner's Ferry Kootenai Tribe or Band was an independent and autonomous group of Kootenai Indians. The historical and ethnological material gathered by Dr. Phillips and Mr. Fuller has been extremely useful and much of it has been the source of the findings made herein.

Petitioner also introduced in evidence the deposition of Professor Carling I. Malouf (Pet. Ex. A-1, pp. 126-214) and a written report (Pet. Ex. 5) by this anthropologist who was assistant professor of anthropology at Montana State University. In determining the lands used

and occupied by the Indians, Mr. Malouf states he used informants, historical data and some archaeological data, and on the basis of the movements of the Indians to certain areas for particular purposes he was able to determine not only the lands they occupied but how they used the lands. In his report (Pet. Ex. 5) the witness has plotted on Maps V and VI, pages 51 and 52, the main and temporary camps of the tribes, and on Map IV, page 23, the favorite hunting and gathering places of the tribes as found by him. On Maps I and II of the same exhibit at pages 9 and 10, he has mapped what he considers to be the domains of the separate tribes.

In his report (pp. 5 and 6), the witness locates the three tribes as follows:

The central region of the Flathead Indians was the Bitterroot Valley. This area was a sort of headquarters for their economic and religious activities, but they by no means confined themselves to this valley in their search for food and materials for the necessities of life. From the Bitterroot they regularly moved in groups to many other localities, sometimes going as far east as the Bighorn river, in eastern Montana and to Yellowstone Park. On other occasions they journeyed up to Flathead Lake, or they even went westward, over Lolo Pass, into Nez Perce country where they sought salmon. Others went south into Shoshoni territory. Their relationship with Indians to the west, south, and north was usually friendly, and there was even some intermarriage between these people.

The Pend d'Oreille were centered in the panhandle region of northern Idaho, but they extended their hunting and gathering activities up the Clark Fork river to approximately Plains, Montana, and northeastward to Flathead Lake. The extremely rough mountain region to the east, as far as the continental divide, was hunting territory frequented by the Kutenai, Pend d'Oreille, Flathead and sometimes the Blackfoot. The latter tribe, however, sent in only their men and rarely were women and children included among their numbers because they were coming in as intruders. The Pend d'Orille (sic) were bounded

on the north by the Kutenai, and on the south by their linguistic brothers, the Flathead. The Upper Pend d'Oreille used the vicinity of Plains, Montana, as a subcenter of their culture. It was a center from where they traveled to the east, northeast, and north in their quest for food, the necessities, and the niceties of life. Other Upper Pend d'Oreille lived near the Montana border, on Lake Pend d'Oreille, and commonly traveled up the Clark Fork river for the purpose of making their living.

The original center of Kutenai activity was Tobacco Plains, along the Kootenay river, in northwest Montana. Prior to 1850 they hunted seasonally at Flathead Lake, competing with Pend d'Oreille, but after that time, under Michelle, one of the signers of the Stevens Treaty, they resided there permanently, replacing or intermixing with the original population.

Mr. Malouf was of the opinion that these Indians had occupied the region for several centuries and that their territories were essentially that outlined in the 1855 treaty. (Deposition, Pet. Ex. A-1, pp. 170-172). The witness further testified that he had never found any instance where any tribe other than "the three petitioners" has occupied the territory claimed in any way that would even approach permanent settlement. (Pet. Ex. A-1, pp. 166-167). Malouf testified that the Flathead had a "strong chieftainship system" and a "national structure"; that the Upper Pend d'Oreille tribal structure was weaker but that they had a "strong chief that they recognized as a chief"; and as to the Kootenai, he testified they "also had some recognition of chiefs, though they were a little bit more scattered and broken down still more." (Pet. Ex. A-1, pp. 189-190). In neither his testimony nor in his report does Witness Malouf speak of a breakdown of the Kootenai into independent and autonomous bands, and it must be assumed that he considered the Kootenai as forming but a single entity. In this respect he, as does Dr. Phillips, differs with those authorities, such as Schaeffer and

Turney-High, who conducted field investigations with the Kootenai and with defendant's ethnologist Chalfant.

Defendant does not dispute the fact that the Flathead, Upper Pend d'Oreille and Kootenai Indians have lived in western Montana during the historic period. Defendant attempts to limit the area of use and occupancy of these Indians to a smaller area than that ceded by the Treaty of July 16, 1855.

Appearing for defendant was Stuart A. Chalfant, ethnologist, who prepared a written report (Def. Ex. 24) and who testified at length before the Commission (Tr. 17-192). Mr. Chalfant testified (Tr. 20) he depended heavily on the field notes of Dr. Claude Schaeffer, anthropologist, who conducted intense field work among the tribes on the Flathead reservation and among the Kootenai tribes of Canada in 1934, 1935, and 1937. (Extracts of Schaeffer's field notes appear as Def. Exhibits 34 and 37-41 inclusive). Defendant's witness testified that his primary interest in his research was "the aboriginal distribution of the land-holding groups and their subsistence economy prior to the Treaty of 1855. I attempted to trace out the basic subsistence patterns, the annual rounds of the several groups involved, determine the location of their more or less permanent sites, usually their winter villages, their major or temporary camp sites . . ."

Witness Chalfant prepared two maps. The first, defendant's Exhibit 23, attempts to plot what Chalfant designates as the "nuclear areas of habitation within which you find their more or less permanent settlements where they winter in large groups, where they made their winter

camps and at times where they spent the summer, too." (Tr. 35). These nuclear areas on the map, he testified, show the areas that "through historical research are claimed to have been their homeland." (Tr. 51) These areas confine the Flathead to the Bitterroot Valley, the Pend d'Oreille to the Lower Flathead valley and the Kootenai to a small area about Flathead Lake. (Map - Def. Ex. 23).

In addition, Mr. Chalfant prepared a map (Def. Ex. 22, 22-A) to show what he considered to be the "primary subsistence areas" of the Flathead, Upper Pend d'Oreille and Kootenai Indians parties to the 1855 treaty. On this map he located the villages and camp sites of the tribes, their gathering and hunting grounds and the use made of the cession area by other tribes. He assigns to the tribes only those areas which they used to the greater exclusion of "alien groups" - or other tribes not a party to this action. Chalfant testified: (Tr. 41)

These lines are drawn to indicate not the lines that these groups solely occupied prior to 1855; they are drawn merely to indicate those lands that they used in their aboriginal subsistence economy to the greater exclusion of other groups.

Now, I say to the greater exclusion, because we do have recorded instances of use within these what I call primary subsistence areas by alien groups, by the Kalispel, the Coeur d'Alene, the Nez Perce, by other Kootenai Bands not represented in the Flathead Reservation Group, and also use through taking, or war, as in the case of the Piegans and some of their raids against some of the Kootenai groups in the north, and Blackfoot, also.

We know, for instance, that there was some Blackfoot hunting in the region of the main ridges of the Rocky Mountains east of the area I have designated.

As an instance of his application of his greater exclusion theory, he testified (tr. 43) that the Kalispel's as a separate group did occupy,

in winter, villages at Thompson Falls, one just east of that point on the Clark Fork River, and another at Plains. He includes the Plains village area within the Upper Pend d'Orcille primary subsistence area because he believed the Plains site was primarily a Pend d'Orcille camp site even though Kalispel wintered there. In the north, he testified; (Tr. 43 and 44) independent and now extinct Kootenai groups were known to have their permanent camp sites in areas that "lie immediately adjacent to, if not immediately within the area designated for the Jennings Band of the Kootenai" (in green on map - Def. Ex. 22).

The Kootenai, Chalfant testified, were a group of loosely organized bands which were never completely under a single tribal authority but rather shown to have comprised several major band groupings. (Tr. 25, 27). The Bonners Ferry band of Lower Kootenai was not a party to the treaty of 1855 although lands ceded by said treaty included lands on which they resided, according to the witness, (Tr. 28) and the Commission has so found in Docket No. 154. Chalfant relies on anthropologists Turney-High (Def. Ex. 42) and Schaeffer (Def. Ex. 37-41) to show the political organization of the Kootenai Indians into separate and independent tribes or bands such as the Bonners Ferry Band of Lower Kootenais, the Tobacco Plains band, the Tweed-Marland band and the Libby-Jennings band of Upper Kootenais. The true ancestors of the Flathead reservation Kootenai, according to Turney-High, was the group that lived at Libby and Jennings, Montana, which moved to the Somers-Elmo-Dayton area at Flathead Lake prior to the 1855 treaty. With this observation, Schaeffer seems to agree. (Def. Ex. 40, p. 78). There is no substantial evidence

to dispute defendant's position with respect to the political organization of the Kootenai Indians. The evidence substantially supports a finding that other groups of Kootenai Indians used and occupied certain areas of the lands ceded by the 1855 treaty to which they were not a party. (Fds. 14 and 15).

As pointed out in the findings (Fdg. 12), the three tribes for a long period up until the time of the treaty and even thereafter were subject to frequent attacks in their home territories by the Blackfoot tribes which caused them to be closely allied for defensive purposes. These attacks reduced the tribes and hindered their activities but the Blackfoot did not attempt to occupy or make permanent use of the lands west of the Rockies. Both Chalfant and Malouf recognized that the main ranges of the Rockies within the cession lands were sometimes hunted upon by the raiding Blackfoot (Pet. Ex. 5, pp. 5-6; Tr. 111). Such raids and hunting did not terminate Indian title in the three tribes. Red Lake Chippewa v. United States, 6 Ind. Cl. Com. 247, 320.

The evidence shows that while each of the tribes held separate territories there was some sharing of the economic uses with each other by these closely allied land-holding entities on a permissive basis as well as with friendly tribes. A study of the evidence shows a definite pattern of exclusive use and occupancy of the areas surrounding the fixed seat of each of the three tribes. While it is true that the tribes ranged at times far from the claimed area they did make extensive use of large areas between the Rocky Mountains and the Bitterroot Mountains. The Commission concludes that the Flathead, Upper

Pend d'Oreille and Kootenai (Libby-Jennings Band) Tribes, parties to the Treaty of July 16, 1855, for a long period prior to, and at the time of, said treaty exclusively used and occupied the separate tracts described for the respective tribes in Finding 19, and that the United States acquired the Indian title to said lands on March 8, 1859, the effective date of the treaty.

Petitioner contends that defendant recognized petitioner's Indian title. Petitioner's position is that Governor Isaac Stevens who negotiated the 1855 treaty had knowledge prior to and at the time of the treaty of the extent of petitioner's use and occupancy of the area in that he had prepared a map prior to the treaty locating tribes in the area and a map at the Hell Gate treaty grounds showing the ceded area which he forwarded to the Commissioner of Indian Affairs with the treaty and reports. Petitioner urges that since these documents were sent to the Senate which ratified the treaty the action of the Senate in ratifying the treaty thus recognized and confirmed petitioner's Indian title to the area ceded. Petitioner's counsel agrees that, under the decisions of this Commission in Quapaw Tribe v. United States, 1 Ind. Cl. Comm., 469, 484, aff'd 128, C. Cls. 45; Felix McCauley, ex rel., v. United States, 1 Ind. Cl. Com., 617, 623; and Red Lake Band of Indians v. United States, 1 Ind. Cl. Comm. 575, 604-605; the language of the Hell Gate Treaty and the statements made by Governor Stevens in the course of the negotiations, standing alone is insufficient to establish recognition of Indian title. Petitioner's counsel contends, however, that under the Commission's decision in Red Lake Indians, et al., v. United States, 6 Ind. Cl. Comm.

247, 316, "that such evidence coupled with prior actions of defendant indicating its knowledge of the area claimed, does constitute such recognition." The exact language used in this Red Lake decisions is as follows:

All of this evidence causes the Commission to conclude that all government officials during a period of at least some twelve years prior to the 1863 session repeatedly recognized petitioner bands as the owners of Indian title to the lands in the Red River Valley area. (Underscoring supplied.)

The decision in the Red Lake case, 6 Ind. Cl. Comm. 247, is based upon a finding of exclusive use and occupancy and not upon recognized title. The above statement upon which petitioner's contention is based merely means that the statements of government officials over a period of time are important items of evidence in establishing Indian title. In the Red Lake case, as in this instant proceeding, the Commission found that petitioners therein did not have exclusive use and occupancy to all the ceded area. There is nothing in the treaty, nor in evidence, that Congress intended to recognize Indian title in petitioner, or petitioner's predecessors-in-interest, to the ceded area.

Petitioner further contends that as a matter of law the Treaty of July 16, 1855, containing a cession of a definitely described area, constitutes prima facie evidence of petitioner's title and that the burden of going forward with the evidence to overcome petitioner's prima facie case is upon defendant. This Commission considered such a contention in Klamath and Modoc Tribe v. United States, 2 Ind. Cl. Comm. 684 and held that "the burden of proof and the burden of proceeding first with evidence as to ownership of the lands rests upon the petitioner."

The case will now proceed to a determination of the valuation and acreage of the lands described in Finding 19, as of March 8, 1859, less the area reserved by the 1855 treaty; the consideration paid under the provisions of said treaty and whether the said sum was unconscionable; leaving to a later proceeding the question of offsets, if any.

/s/ WM. M. HOLT
Associate Commissioner

I concur:

/s/ EDGAR E. WITT
Chief Commissioner