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MILTON J. THOMPSON v. THE UNITED STATES  
AND KLAMATH INDIANS.

[Indian Depredations, 6650. Decided February 15, 1909.]

*On the Proofs.*

The claimant brings suit against the "Klamath Indians." After the jurisdictional period for bringing such suits has expired he files an amended petition giving the name of the defendants as the "Lower Klamath Indians" or "Klamath River Indians." It appears in the *Hell Case* (39 C. Cls. R., 350) that

## Reporters' statement of the case.

the tribe were scattered over a wide country, that the Indians were self-supporting, that they were in fact part of a body of red men, and known as "Mission Indians;" in this case that the Indians were savage, insolent, and warlike, recognized by the Government as reservation Indians, and having an agent and being referred to as a tribe by the Government.

- I. Where two tribes bear the same name the general description of the defendants as "Klamath Indians" is sufficiently broad to admit of a specific designation in the proof as to which Indians were intended to be sued. The difference between this case and that of the *Kiowas v. Martinez* (195 U. S. R., 469) pointed out.
- II. The *Indian Depredation Act, 3d March, 1891* (26 Stat. L., p. 851), contemplates suits brought against a "tribe, band, or nation of Indians" within a specified jurisdictional period. Where the Indians have no chief, organization, or laws, but are insolent or warlike—savages, in fact—numbering between 2,000 and 3,000 recognized as reservation Indians having an agent, and occupying the soil like other aboriginal inhabitants, they constitute an entity against which a suit may be brought. The difference between this case and that of *Bell v. The Dieguenos Indians* (39 C. Cls. R., 350) pointed out.

*The Reporters' statement of the case:*

The following are the facts of the case as found by the court:

I. At the time of the depredations hereinafter stated the claimant, Milton J. Thompson, was a citizen of the United States.

II. At the time of said depredations the defendant Indians were in amity with the United States.

III. Two tribes or bands of Indians bore the name of Klamath Indians, growing out of their location and not out of any ethnological ancestry. One of these bands lived at Klamath Lake, Oregon, and was denominated in the departmental reports and records as Klamath Lake Indians. The other band was known as Klamath River Indians, or Lower Klamath Indians, or Klamath Indians. The Klamath River Indians, or Lower Klamath Indians, committing the depredations set forth in the petition, numbered from 2,000 to 3,000 souls. They lived together from the junction of the Trinity River with the Klamath River to the mouth of the Klamath, covering a distance of more than 20 and under 50 miles.

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They were inclined to be warlike, but were in amity with the United States. They were proud and insolent and disposed to resist the encroachment of the whites upon what they called their country. Some years after the acquisition of California the Klamath River band or tribe were found to live upon the roots, berries, and seeds of their native hills and upon the fish of the river. Mountains heavily timbered, through which the Klamath River appears to have cleft its way, interspersed with bottoms of a few acres, fitly describes the land adjacent to the river.

The United States undertook to initiate a system of labor among the Klamath River or Lower band of Indians and continued to keep them, as far as practicable, within the bounds of their habitat and to withdraw them from the influences of unrestrained intercourse with the whites. By an executive order issued under the authority of the President of the United States, dated November 16, 1855, boundaries were established for the Klamath River Indian band for a reservation, and the Secretary of the Interior recognized certain boundaries around the reservation so established. There were official surveys made, showing that the boundary land ran through townships eleven (11) and twelve (12) north, range 2 east, and the claimant's range was outside the reservation so established. The defendant Klamath River band was never removed by the United States, presumably because it was officially reported to the Interior Department that from the mountainous and densely timbered character of the country surrounding the defendant Indians in their habitat it would be almost impossible to remove the defendant Indians to any other locality, and then only at great expense to the Government and danger to the peace of the section while the proposed removals were going on. These reservation boundaries remained unchanged until a period subsequent to the depredations complained of.

Official reports show that the defendant band of Indians would probably continue to be peaceable if left unmolested by the whites. There was never any treaty with the defendant Indians. They were called Klamath River Indians. The evidence does not establish that they were ever in any way affiliated with the Klamaths designated in the treaty

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between the United States and the Klamath Indians in 1864. (16 Stat., 709.) The reservation, however, set apart for them on the Klamath River was about 2 miles in width and was overflowed by a freshet in 1861, which left the soil covered to a depth of several feet with sand. They continued to claim all the ground in the vicinity of the original reservation set apart to them. They had no chief, no organization, and no laws. They lived in ranches and villages scattered along the banks of the river, some on one side and some on the other, but all close to the banks. There was never any attempt on the part of the United States preceding the time of the depredations described in the petition to extinguish the Indian title of occupancy where the defendant Klamaths resided. They were known, and continued to be up to the time of the depredation and since, as Indians untaxed. Reports from where the defendant Klamaths resided were officially made from the Klamath Indian Reservation and show that the abundance of their natural food and the ease with which they procured it caused them to look with contempt upon labor.

The land on the Klamath River where they lived was peculiarly adapted to the growth of vegetables, which they produced in great abundance, and their particular food, aside from such vegetables which were made by them to grow upon the land and aside from roots and berries, consisted of salmon and other fish, which likewise were quite abundant. The defendant Indians lived for the most part upon the reservation, but some of them lived below the reservation. The villages in which they lived appear to have contained from 25 persons to 300 souls. The tribal entity of the defendant Indians as first recognized by the United States was never by any act of the Government changed. They were at all times and in all the departmental reports dealt with and referred to as a tribe.

IV. The court finds from all the evidence the ultimate fact, in so far as it is a question of fact, to be that the Klamath River or Lower Klamath Indians were a band or tribe of Indians under the act of March 3, 1891 (26 Stat., 851), entitled "An act to provide for the adjudication and payment of claims arising from Indian depredations."

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V. During the winter of 1877 and the spring and fall of 1878 Indians belonging to the Klamath River, or Lower Klamath tribe of Indians, took and drove away property of the kind and character described in the petition, the property of the claimant, which was reasonably worth the sum of \$3,375.

Said property was taken, as aforesaid, without just cause or provocation on the part of the owner or the agent in charge, and has never been returned or paid for.

*Mr. Harry Peyton* for the claimant.

*Mr. Lincoln B. Smith* (with whom was *Mr. John G. Thompson*) for the defendants.

Howrx, Judge, delivered the opinion of the court:

This is a California claim under the Indian depredation act of March 3, 1891 (26 Stat., 851). The petition is against the United States and the Klamath Indians, and there are two defenses. The first of these relates to the change in the name of the tribe charged from the Klamath Indians to the Lower Klamath Indians or Klamath River Indians. Defendants say that no relation existed between the Klamath tribe of Indians and the Indians living on the lower Klamath River, who are the real defendants and who are proven to have committed the depredations. Because of this it is contended that no judgment can be rendered in favor of the claimant, inasmuch as the Klamath tribe did not commit the depredations and the Indians of the lower Klamath River were not brought into the case until the amended petition was filed, which was after the period fixed by statute for instituting proceedings. Inasmuch as a new suit was barred by statute it is argued that the Indians living on the lower Klamath River are exempted from being made or treated as defendants by amendment in a suit already commenced.

In *United States and the Kiowas v. Martinez* (195 U. S., 469) it was held by a divided court that in an action brought under the Indian depredation act of March 3, 1891, *supra*, a tribe of Indians not originally named in the petition could not be brought into the action by amended petition after the expiration of three years from the filing of the original

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petition in the Court of Claims. There the action was instituted at the outset to recover damages against the United States and the Ute tribe of Indians, and after the time for bringing suit an amended petition was filed charging the depredation to have been committed by the Kiowa Indians. The majority of this court decided that the claimant was entitled to recover, but upon appeal the Supreme Court likewise divided, but the majority there directed the petition to be dismissed, because the action had not been commenced against the proper tribe within three years. This case is different. Two tribes of Indians bore the name of Klamath Indians, not with reference to any ethnological ancestry, but rather from circumstances growing out of their location. One body lived at Klamath Lake, Oregon, and another body was located along the Klamath River and were known as Lower Klamaths, or Klamath River Indians. We are of opinion that the general description of Klamath Indians would warrant a specific designation in the proof as to which of the Klamath Indians were intended to be sued. The findings establish two organizations of Klamaths and the pleadings contain a sufficient description to permit the entry of judgment against the Lower Klamaths, or Klamath River Indians, under the proof of the commission of the depredation by them. Accordingly, we hold that the plaintiff has a right to proceed against the depredators. *Graham v. United States et al.* (30 C. Cls., 318).

The other defense presents the question whether the Indians living on the lower Klamath River were a "tribe, band, or nation of Indians" within the meaning of the act of March 3, 1891. The act provides for this court to finally adjudicate all claims for property of citizens of the United States taken or destroyed by Indians belonging to any band, tribe, or nation in amity with the United States without just cause or provocation on the part of the owner or agent in charge and not returned or paid for. If no annuities of the tribe are available, then the amount of the judgment where liability is established is directed to be paid by the United States, but to remain a charge against the tribe upon which the claim is made and proved. In support of this defense

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we are referred to the case of *Bell v. United States and Dieguenos Indians* (39 C. Cls. R., 350). It was there decided that the defendant Indians at the time of the depredation had no affiliation with an Indian band or tribe and no organization of their own, and that if Indians committing the thefts had no connection with a tribe, band, or nation no responsibility attached to the United States and the court was without jurisdiction.

In some respects the present case is like that, but in other respects materially different. Like the other Mission Indians of California, the tribe made defendants in the Bell case was scattered over a number of counties, earning a precarious livelihood by cultivating small patches of land and working for ranchers and white settlers when opportunity offered. Many of them occupied by sufferance lands which their ancestors had cultivated, but their settlements were scattered over hundreds of miles and they were without specific reservations, and were never recognized by the United States as wards of the Government. Defendants there were in fact a part of a body of red men, all of whom were known as "Mission Indians," composed of five distinct tribes in their entirety. Mission Indians were all engaged in agricultural pursuits and with few exceptions self-sustaining, and never asked for supplies nor furnished any. In many of their characteristics they were like the Pueblos of New Mexico and Arizona, and when the independence of Mexico was achieved in 1821 it was the policy of that government to make the civilized Indians a part of the body politic of the new government of Mexico. This court, however, refused to decide whether these Indians were citizens of the United States, but based its decision upon a want of distinctive entity as a tribe, band, or nation.

In the present case the findings establish that the defendant tribe had no chief, no organization, and no laws. But wholly different conditions otherwise prevail with respect to the defendant band. They were insolent and warlike. They were quite disposed to resist the encroachment of the whites upon what they called "their country." They lived on the Klamath River, which had cleft its way through a canyon and emptied into the Pacific Ocean. Mountains

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heavily timbered describes the land adjacent to the river. Along the banks there were small bottoms of a few acres which in a way for a time the Klamaths cultivated. But they lived largely upon roots, herbs, seeds, and such vegetables as they grew upon the small cultivated lands in the bottoms and upon fish gathered from the stream upon which they lived. They were savages in fact. They numbered between two and three thousand souls and were recognized as reservation Indians. They adhered together as Klamaths and were Indians untaxed. Though they do not appear to have been in treaty relations with the United States, the official records disclose that they were given a reservation in the habitat where the Government found them after the acquisition of California. The reservation set apart for them as far back as 1855 appears never to have been surrendered and there remained a kind of entity until after these depredations outside their reservation. They had an agent and they occupied the soil very much as other aboriginal inhabitants. They were at all times and in all the departmental reports and records dealt with and referred to as a tribe. They lived in ranches and villages scattered along the banks of the river, and inasmuch as the Government made no attempt to remove them because of danger to the peace of the section we must assume that they were a savage domestic band within the meaning of the act under which the action is brought. The United States having never surrendered control of them, they continued, presumably, to be wards of the Government and within the exclusive jurisdiction of the authority of the United States. *Montoya v. United States et al.* (32 C. Cls., 350).

Whilst the matter is not free from doubt, the judgment of the court is that the defendant band constituted such an entity as upon any depredations committed by them under the conditions prescribed for recovery by the act of March 3, 1891, the United States assumed to pay.

Judgment will be entered for claimant against the Klamath Indians, otherwise known as Lower Klamath Indians, or Klamath River Indians, and the United States in the sum of three thousand three hundred and seventy-five dollars (\$3,375).