

The Treaty of Cession, dated March 30, 1867, and ratified by Congress, affords some insight into the status of Alaska's natives at that time. Article III provides: "The inhabitants of the ceded territory, according to their choice, reserving their natural allegiance, may return to Russia within three years; but if they should prefer to remain in the ceded territory, they with the exception of uncivilized native tribes, shall be admitted to the enjoyment of all the rights, advantages, and immunities of citizens of the United States, and shall be maintained and protected in the free enjoyment of their liberty, property, and religion. The uncivilized tribes will be subject to such laws and regulations as the United States may, from time to time, adopt in regard to aboriginal tribes of that country."

The term "uncivilized tribes" mentioned in article III refers to those natives who were "independent" or "not wholly dependent" as those terms are defined in the third charter of the Russian-American Co. I will not attempt to make a classification as to all the particular native groups in Alaska but will merely say that the "civilized tribes" are limited to the Aleutian chain, lower Alaska Peninsula, and lower Cook Inlet. In ratifying the treaty, it was the obvious intention of Congress to grant the "civilized" natives the same property rights as all other American citizens and to treat the "uncivilized tribes" the same as all other aboriginal tribes of the United States. This equal treatment should also apply to their rights in the land.

One other brief comment on the treaty of cession. Some persons have contended that because of article VI, which provided for the payment of an additional \$200,000 to the Russians, Indian title to lands in Alaska has been extinguished. That position is not valid because the actual reason for the additional \$200,000 payment, as discussed in *Kincaid v. U.S.*, 150 U.S. 483 (1893), was to compensate the Russian-American Co. for its possible vested property rights.

It is undisputed that the Alaska natives have used and occupied certain lands to the exclusion of other people for many years. That continuous and exclusive use, unless extinguished, is sufficient to establish aboriginal title. It is also undisputed that Congress has never extinguished the aboriginal rights of the natives, Indian title, when proved, must be accorded proper respect.

There has been no extinguishment, to quote the Supreme Court in *United States v. Santa Fe Pacific R.R.*, 314 U.S. 339 at 347, either "* * * by treaty, by the sword, by purchase, by the exercise of complete dominion adverse to the right of occupancy, or otherwise."

We do not believe that Indian title depends upon recognition or approval. It is based on aboriginal possession. Once established, it endures until extinguished or abandoned. See *Lipan Apache Tribe v. The United States*, U.S. Court of Claims, 15 Ind. Cl. Comm. 532.

Legislatively and judicially, Indian title in Alaska has been preserved. Let us first look at the legislative history.

The act of May 17, 1884, in section 8, provides in part "that the Indians or other persons in said district (Alaska) shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress * * *" (matter in parentheses supplied).

The act of June 6, 1900, 31 Stat. 321, in section 27 has a similar provision. The Alaska statehood act, Public Law 85-508 (1958), in section 4 states:

"As a compact with the United States said State and its people do agree and declare that they forever disclaim all right and title to any lands or other property not granted or confirmed to the State or its political subdivision by or under the authority of this Act, the right or title to which is held by the United States or is subject to disposition by the United States, and to any lands or other property (including fishing rights), the right or title to which may be held by any Indians, Eskimos, or Aleuts (hereinafter called natives) or is held by the United States in trust for said natives; that all such lands or other property (including fishing rights), the right or title to which may be held by said natives or is held by the United States in trust for said natives, shall be and remain under the absolute jurisdiction and control of the United States until disposed of under its authority, except to such extent as the Congress has prescribed or may hereafter prescribe, and except when held by individual natives in fee without restrictions on alienation: Provided, that nothing contained in this Act shall recognize, deny, enlarge, impair, or otherwise affect any claim against the United States, and any such claim shall be governed by the laws of the United States applicable thereto: and nothing in this Act is intended or shall be con-