

Applying these criteria to the interior of Alaska, we have no Tongass National Forest Proclamation. All we have are the Russian Treaty, the general laws relating to homestead and mining, and generalities of that type. Therefore the syllogism is that Indian title in the Interior of Alaska has never been extinguished, and the natives there still own that which they have always owned.

In this context, you ask me what should be a reasonable test for actual possession. The Court of Claims found that the Tlingit and Haida Indians owned all of Southeastern Alaska. To be sure, there were areas in Southeastern which were entirely inaccessible, and other areas which were entirely unusable because there was simply nothing there for use, as for example, mountain tops. As to these barren and inaccessible areas, the Court of Claims held that the Tlingit and Haida Indians owned the same and that they exercised dominion of the same, but "no value" could be "assigned" to them because of their barrenness.

Now to answer your question more directly: What would be a reasonable test? The answer must be that the test is a relative one. In the Eskimo area, no doubt one family needed one-hundred miles square. That is because the usufruct of the area were so meagre that such a large area was necessary in order to sustain the family. Bear in mind that my use of the term family is in its native sense and could consist of several white man's families. Even though the area was large, the Eskimos exercised dominion over the same. No other person was permitted to trespass on the same. In the Eskimo region, of course, the white man has refused to trespass on the same because of its remoteness and hardships. The type of use, of course, is important. Thus, the Eskimos have their hunting trails, their winter lodgings, their summer fishing spots, their vegetable resources over well-defined and well-protected locations and areas. As is demonstrated by some material that I am enclosing, the Courts do not consider that merely the square footage of an igloo is in the possession of the Eskimo, but rather his hunting areas, his fishing locations, the land over which he exercises dominion, as being in his possession.

More importantly, however, the question should be viewed from the practical. We, as advisors for the Eskimo groups, recognize that the United States could deprive the Eskimos completely of their rights and, as is demonstrated by the Tee-hit-ton case, such deprivation is not a taking within the meaning of the Fifth Amendment. Thus, we and the Eskimos recognize there has to be a practical solution, that the demands of the state as well as justice to the Eskimo, both must have recognition. We say, categorically, that we on our side are willing to find a practical solution between these two diametrically opposed thoughts.

But this last thought is one of compromise and not of pure justice.

*Question 5. Do you further define "time immemorial" or do you consider this term self-explanatory?*

Answer. The question is not important because, in the context of Alaska, the groups have been in possession of their lands since time immemorial under any definition.

*Question 6. What constitutes "abandonment"?*

Answer. The English common law definition of abandonment is that one intends to turn his back forever on a thing he possessed. To understand abandonment from the standpoint of an Eskimo, Aleut, or Indian, one must understand his frame of reference. Land is non-transferable; such a thought is unthinkable; it is immoral to entertain such. Where man was himself reared, where he married and bore his children, where he reared his children, where he knew his grandmother and grandfather, and where he played with his grandchildren, to turn his back on such a place is incomprehensible.

To be sure, the younger generation is moving away. They are going to the white man's school, and going to college. Or maybe they have succumbed to the frailties of society and bar in Skid Row.

We suppose that if an area has been abandoned for a couple of generations, then it is gone. Its being abandoned, however, is more a matter of the natives having died out, rather than intentionally turning his back on his home. Certainly, there are areas where the true owner has disappeared and thus, there are areas which have been abandoned.

*Question 7. What is your definition of "aboriginal rights"?*

Answer. My definition is not important. The definition that I favor is that which is enforced by the Courts, namely: that of the Tlingit and Haida case. The Tlingit and Haida case held that all of Southeastern Alaska was aboriginally held by the Tlingit and Haida Indians. And when I say all of Southeastern, I mean all.