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HUNTING RIGHTS: RETENTION OF TREATY RIGHTS AFTER TERMINATION—Kimball v. Callahan¹

Mary Pearson

Introduction

Plaintiffs, who were Klamath Indians terminated from federal supervision by act of Congress² who had elected to withdraw from the tribe,³ sought a declaratory judgment in federal court of their right to hunt, trap, and fish on their ancestral reservation⁴ free of the state of Oregon's fish and game regulations. The lower court denied relief and dismissed the complaint. The court of appeals held that Indians terminated from federal supervision pursuant to the Klamath Termination Act,⁵ and even those who elected to withdraw from the tribe,⁶ nevertheless retain treaty hunting, trapping, and fishing rights, free from the control and regulation of the state of Oregon, on the lands constituting United States national forest land and that privately owned land on which hunting, trapping, or fishing is permitted.

The *Kimball* case appears to have far-reaching effects not only for terminated Indians, but also for those tribes whose reservations have been reduced in size. In a recent case out of Washington state,⁷ the Supreme Court held that Colville tribal members had the right to hunt and fish on former reservation lands that had been severed from the present reservation.⁸ The severance agreement provided expressly that "the right to hunt and fish in common with all other persons on lands not allotted to said Indians shall not be taken away or in anywise abridged."⁹ The Washington Supreme Court opinion construed the agreement as a mere promise by the United States that so long as the United States retained any ceded land and allowed others to hunt there, Indians would be allowed to hunt there also. But the Supreme Court declared that congressional ratification of the severance agreement must be construed to exempt the Indians from like state control or Congress would have preserved nothing which the Indians would not have had without that legislation. The Court found that state qualification of hunting and fishing rights is precluded by force of the supremacy clause, and neither an expressed provision precluding state qualification nor the consent of the state was required to achieve that result.¹⁰

Treaty and Statutes

One hundred and ten years ago the United States made a treaty

with the Klamath and Modoc [Modoc] tribes and Yahooskin Band of Snake Indians, in which the Indians ceded certain lands to the United States in return for \$115,000 to be paid over a 15-year period and other services.¹¹ Included in the treaty was a provision that "certain land within the country ceded by this treaty, shall . . . be set apart as a residence for said Indians, [and] held and regarded as an Indian reservation, . . ."¹² The treaty prohibited white persons from living on the reservation and reserved to the Indians "the exclusive right of taking fish in the streams and lakes, included in said reservation, . . ."¹³

Control over Indian conduct was reserved to Congress by the supremacy clause.¹⁴ In 1953, Congress, by Public Law No. 83-280, granted certain states civil and criminal jurisdiction "over offenses committed by or against Indians in the areas of Indian Country."¹⁵ In the case of Oregon, this land is described as "[a]ll Indian country within the State, except the Warm Springs Reservation."¹⁶ Public Law 280 provided further that

Nothing in this section . . . shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping or fishing or the control, licensing, or regulation thereof.¹⁷

Less than one year later and almost 90 years to the day after the signing of the treaty with the Klamaths, the same Congress that passed Public Law 280 passed the Klamath Termination Act,¹⁸ a bill to terminate all federal supervision over the Klamath, Modoc, and Yahooskin Band of Snake Indians.¹⁹ Two sections of the Klamath Termination Act became bones of contention between the state and the tribe, Section 564m(b)²⁰ dealing with water and fishing rights, and Section 564w²¹ dealing with the taking of the land itself. From this conflict came several Indian rights suits.²²

Oregon Cases Leading Up To Kimball

In 1956, the Klamath, Modoc, and Yahooskin Band of Snake Indians (also known collectively as the Klamath Tribe) and nine individual members of the tribe, as owners of the hunting and trapping rights, privileges, and immunities within the area of aboriginal domain reserved to the Klamath Tribe by the Treaty of 1864,²³ filed suit against the state of Oregon.²⁴ The provisions of Public Law 280 formed the basis of the state's defense. Following the adoption of Public Law 280 in 1953, the state had repeatedly threatened to arrest

members of the tribe and confiscate their guns, sights, traps, and other equipment because such members failed to conform to Oregon laws respecting season, species, sex, or bag limit.²⁵ In this federal district court decision, Judge Solomon found in favor of the Indians after tracing methods of hunting and trapping from aboriginal times to modern days, including species of animal hunted and trapped and methods used.²⁶ The court held that Public Law 280 did not extend the hunting and trapping laws of the state of Oregon to the Klamath Indian Reservation.²⁷

In 1956, the Klamath Termination Act had not yet gone into effect. It became effective in 1961.²⁸ In 1964, the tribe lost the measure of legal security that had been gained in 1956, when remaining members of the tribe were forced to seek a declaration of their right to hunt and trap free from state regulation and control on forest lands taken by the United States pursuant to Section 564w of the Klamath Termination Act.²⁹ The state maintained that the Klamath Termination Act and the manner in which it had been carried out³⁰ resulted in the loss of plaintiffs' treaty rights within the former reservation.³¹

The Klamaths argued that their right to hunt and trap free from state control was conferred by the treaty of 1864; that while Congress has the power to abrogate such treaty rights, it will not be assumed to have done so in the absence of express language;³² and that there is nothing in the Klamath Termination Act limiting their right to hunt and trap upon lands assigned to them by treaty.³³ The Indians argued that since their fishing rights were preserved in the Termination Act, that by judicial construction their hunting and trapping rights are coextensive with their fishing rights.³⁴ The district court disagreed and said that plaintiffs had lost their treaty hunting and trapping rights along with the former reservation.³⁵

The United States, in an *amicus curiae* brief, expressed the view that with the Termination Act and the many other termination acts of the 1950's and 1960's,³⁶ it was conclusively demonstrated that Congress intended to amalgamate the Indians with the rest of the population and not accord them special treatment.³⁷ The government argued that the purpose of the Klamath Termination Act was to (1) end federal supervision, (2) remove from Indians their special status as Indians, and (3) make state laws applicable to them in the same manner as they apply to other citizens.³⁸ This position prevailed on appeal and the lower court's decision was affirmed.³⁹

The court of appeals held that if Section 564m(b) preserved to the Indians fishing rights and privileges to the extent previously enjoyed, it had done so by express statutory grant of rights which the

Indians could not have claimed because their rights were limited to the reservation land under the treaty.⁴⁰ The court concluded by interpreting Congress' intent to clearly limit the application of the section to fishing alone.⁴¹

The Menominee Cases

Similar issues were being litigated in Wisconsin at the same time by the Menominee Tribe which had also been terminated in 1954.⁴² *State v. Sanipaw*⁴³ was a criminal prosecution of three enrolled members of the Menominee Tribe for alleged violation of certain game laws. The trial court held in favor of the Indians and the state appealed the decision.⁴⁴ The Wisconsin Supreme Court referred to the language of the Termination Act that "the laws of the several States shall apply to the tribe in the same manner as they apply to other citizens or persons within their jurisdiction,"⁴⁵ and concluded that "the Termination Act abrogates any right to be free of the state's game laws in exercising hunting rights over the former tribal lands of the reservation."⁴⁶

After the adverse decision in *State v. Sanipaw*,⁴⁷ the Menominee felt that if they had lost their hunting and fishing rights, they should be compensated for that loss and sued the United States in the Court of Claims.⁴⁸ The government challenged the jurisdiction of the Court of Claims and contended that the Menominee Termination Act⁴⁹ abolished the Menominee Tribe of Indians. The Court of Claims disagreed.⁵⁰

Two issues presented in this case were whether the Menominee Tribe had exclusive and unregulated hunting and fishing rights on the Wolf River Reservation, and if so, whether the Menominee Termination Act abrogated or cancelled those rights.⁵¹ The court answered the first in the affirmative, based on the fact that at the time of the 1854 treaty, hunting and fishing was a way of life with the Menominee and cited the 1956 *Klamath* case as support.⁵²

In dealing with the possibility of the Termination Act abrogating those rights, the court compared the Menominee and Klamath Termination acts. The Menominee Act, unlike the Klamath Termination Act, did not mention hunting and fishing rights. The Wisconsin Supreme Court in *State v. Sanipaw*,⁵³ had construed language in the Act to cut off unregulated hunting and fishing rights and made the Menominee Tribe subject to the game laws of Wisconsin. The Court of Claims looked to the legislative history and found two reasons why Congress had not preserved and protected hunting and fishing rights in the Menominee Termination Act itself:⁵⁴

(1) They were preserved and protected in Public Law 280 and two other termination bills considered by Congress, but not passed. Both of those bills contained language practically identical to that in Public Law 280 preserving hunting and fishing rights. The court concluded that Congress had decided it was unnecessary to preserve hunting and fishing rights in both the Termination Act and Public Law 280.⁵⁵

(2) It was unnecessary to preserve hunting and fishing rights in the Termination Act because by the terms of the Act the tribe was to submit a plan to the Secretary of the Interior "... for the protection of the water, soil, fish, and wild life."⁵⁶ The Termination Act was to become effective when the Secretary had issued and published a proclamation containing the plan submitted by the tribe, along with the Secretary's approval of the plan.⁵⁷

The Court of Claims referred again to the 1956 *Klamath* district court decision,⁵⁸ which stated that hunting and fishing rights were specifically recognized by Congress in Public Law 280 and that the members of the tribe had a right to hunt and trap on the reservation without restriction or control by the state of Oregon.⁵⁹

The court agreed with plaintiffs' argument that "to be held as Indian lands are held"⁶⁰ grants to the Indians the unqualified right to hunt and fish on the reservation in the Indians' own way, free from all outside regulation and control.⁶¹ The Menominee Termination Act did not abrogate the exclusive hunting and fishing rights but actually preserved and protected them. The court felt that the Wisconsin Supreme Court might have reached a different decision if it had had the benefit of all the facts and circumstances surrounding Public Law 280. The Court of Claims held that Menominees who are enrolled members of the tribe, on its records, own and possess at the present time the exclusive right to hunt and fish on their reservation free from restriction, regulation, or control by the state of Wisconsin,⁶² and dismissed the petition of the Menominee against the United States for failing to state a cause of action. The Court of Claims further held that action of the state in interfering with rights of the Indians was not action which made the United States liable, leaving the Menominee in a state of legal limbo.⁶³

The dilemma was solved when the suit came before the United States Supreme Court on writ of certiorari.⁶⁴ The Supreme Court agreed with the Court of Claims that the language, "to be held as Indian lands are held," includes the right to hunt and fish, even though the 1854 treaty was silent about hunting and fishing rights.⁶⁵ Dealing with the ambiguity between the 1848 and 1854 treaties, the Court quoted from *United States v. Winans*⁶⁶ which said: "[W]e

will construe a treaty with the Indians as 'that unlettered people' understood it, and as justice and reason demand, in all cases where power is exerted by the strong over those to whom they owe care and protection. . . ."67

In discussing the legislative history of the Menominee Termination Act, the Court affirmed the decision of the Court of Claims that the amendment to Public Law 280 two months after the Termination Act was passed, although granting Wisconsin jurisdiction over "all Indian country within the State,"68 went on to protect Indian treaty rights.

In discussing Public Law 280, Justice Douglas, in his majority opinion, said, "[t]hat provision on its face contains no limitation; it protects any hunting, trapping, or fishing right granted by a federal treaty."69 Public Law 280, as amended, became law in 1954, when the Menominee Reservation was still "Indian country" within the meaning of that law, and nearly seven years before the Termination Act became fully effective in 1961.70

The Supreme Court determined that the Termination Act and Public Law 280 must be considered in *pari materia*.71 The Court concluded that although federal supervision of the tribe was to cease and all tribal property was to be transferred to new hands, the hunting and fishing rights granted or preserved by the 1854 treaty survived the Termination Act of 1954.72 The use of the word "statute" in the Termination Act was considered potent evidence that Congress had no treaty in mind and the Court felt that this construction was in accord with the overall legislative plan.73

The Court declined to construe the Termination Act as a backhanded way of abrogating the hunting and fishing rights of the Indians.74 "While the power to abrogate those rights exists" . . . the intention to abrogate or modify a treaty is not to be lightly imputed to the Congress."75

The Court buttressed its conclusion by looking at Congress' intent. Senator Arthur Watkins of Utah, the senator chiefly responsible for pushing the Termination Acts to enactment, remarked at the signing of the bill, that it "in no way violates any treaty obligation with this tribe."77 The Court found it difficult to believe Congress would subject the United States to a claim for compensation by destroying property rights conferred by treaty, particularly at a time when Congress was attempting to settle the government's financial obligation toward the Indians by the Termination Acts, and it affirmed the Court of Claims.78

In 1973, four members who had withdrawn from the Klamath Tribe attempted to assert exemption from state game laws in state court.⁷⁰ Defendants had been prosecuted and convicted of illegal possession of deer killed on former reservation land.⁸⁰

Defendant Indians argued that *Menominee Tribe v. United States*,⁸¹ which held that tribal hunting and fishing rights guaranteed by treaty may be abrogated only by explicit legislation, overruled the 1964 *Klamath* decision.⁸² The state appellate court distinguished *Menominee Tribe v. United States*⁸³ and said it did not apply because the court was not dealing here with either the Klamath Tribe or its members but those persons who have elected to withdraw from the tribe and ceased to be members, with the single exception of sharing in proceeds of tribal claims against the United States.⁸⁴ The court concluded by saying that when the issue is who shall be beneficiaries of federal treaties, then Congress had the ultimate authority to determine tribal membership.⁸⁵

The court of appeals further held that whatever rights, if any, enrolled members might retain to hunt on former reservation lands, such rights did not extend to nonmembers, including defendants, and defendants enjoyed no immunity from state game laws.⁸⁶

On rehearing, the court of appeals held that remaining members of the Klamath Tribe did not have hunting and trapping rights on the former reservation land, that they had no right to assign such rights to persons who were not members of the tribe, and the petition for rehearing was denied.⁸⁷

In *Kimball*,⁸⁸ plaintiffs were five Klamath Indians who withdrew from the Klamath Tribe. With the exception of the plaintiffs being withdrawn members of the tribe, two issues presented were identical with *Menominee Tribe v. United States*,⁸⁹ the first being whether the treaty was correctly interpreted to include hunting and trapping rights, and the second whether these rights survived the Klamath Termination Act.⁹⁰

Judge Solomon, who decided the 1956 *Klamath* case in favor of the tribe, denied a request for declaratory judgment and dismissed the complaint.⁹¹ On appeal the court discussed *Menominee Tribe v. United States*⁹² and the construction of the treaty language and found that the language "... set apart as a residence for said Indians and held and regarded as an Indian reservation," also includes the right to hunt and fish.⁹³ The fact that the specific treaty provision reserved to the Klamaths the exclusive right to fish was not consid-

ered to exclude hunting and trapping in light of the highly significant role that hunting and trapping play in the lives of the Klamaths. The court stated that it seemed unlikely that the tribe would have knowingly relinquished these rights at the time of entering into the treaty⁹⁴ and again cited *Menominee Tribe*⁹⁵ and *State v. Sanipaw*.⁹⁶ The court in *Kimball* cited the 1956 *Klamath & Modoc Tribes v. Maison* decision,⁹⁷ which had held that the Klamath Tribe had enjoyed these rights for almost 100 years with the consent and acquiescence of the state of Oregon.⁹⁸ This led to the conclusion that the treaty provides exclusive rights to hunt and trap, as well as fish, free of state regulation.⁹⁹

Defendants argued that *Menominee Tribe v. United States*¹⁰⁰ is distinguishable because of significant differences between the Menominee and Klamath Termination Acts. The Menominee had no option, as did the Klamath,¹⁰¹ to withdraw from the tribe and receive the money value of their interest, although each member of the tribe on the final roll received payment of \$1,500.¹⁰² The Menominees continued to occupy the same land before and after termination, although title to the land changed hands.¹⁰³ The disputed land in *Kimball* is no longer legally occupied by the Klamath. The court found that the conclusions of *Menominee Tribe v. United States*¹⁰⁴ were applicable despite these distinctions.¹⁰⁵

The court of appeals said that the reasoning in *Menominee Tribe*¹⁰⁶ may be even more compelling in the case of *Kimball* because Senator Watkins at hearings on the bill suggested that the government "buy out" the Indians' hunting and fishing rights rather than preserve them after termination.¹⁰⁷ The Klamath Termination Act provides that withdrawn members of the tribe relinquish their interests in tribal property,¹⁰⁸ but treaty rights are rights of individual Indians.¹⁰⁹ Although defendants also cited the 1964 Ninth Circuit *Klamath* case¹¹⁰ as authority for their position, the court of appeals held,

This reasoning cannot stand in light of *Menominee Tribe*. It is inconsistent with the Supreme Court's requirements that Congress clearly indicate when it intends to abrogate treaty rights. Moreover, it is inconsistent with the Court's construction of Public Law 280 that treaty rights with respect to hunting, trapping, or fishing survive the Termination Acts to the extent that they attach to land known as "Indian country" at the time Public Law 280 became effective.

Congress not only failed to indicate clearly an intent to abrogate treaty rights; it in fact expressly preserved at least fishing rights on the former reservation. . . .¹¹¹

Defendants further argued that Section 564m(b) of the Termination Act cannot aid plaintiffs because they are no longer "members" of the tribe. The court of appeals rejected this argument because the Act provides that nothing shall abrogate treaty fishing rights¹¹² and concluded that a Klamath Indian possessing treaty rights on the former reservation at the time of the Termination Act retains those rights, even though he relinquishes his tribal membership or the reservation shrinks pursuant to the Act.¹¹³ The court declared that plaintiffs may exercise their treaty hunting, trapping, and fishing free of state fish and game regulations on the lands of their ancestral Klamath Indian Reservation, including that land now constituting United States national forest land and that privately owned land on which hunting, trapping, or fishing is permitted.¹¹⁴

* * *

On February 10, 1976, at the United States District Courthouse in Portland, Oregon, Senior Judge Gus J. Solomon heard one and one-half hours of argument in a suit brought by five Klamath Indians against the state of Oregon. A ruling in this case in which the Klamath Indians challenged the right of the state to regulate hunting and fishing on the former Klamath Indian Reservation will come sometime after March 20. Judge Solomon permitted the United States Department of Justice to enter the case as a friend of the court and gave federal attorneys until February 20 to file a brief. No testimony was heard in court as attorneys submitted statements from their witnesses and agreed to accept without cross-examination the testimony of the other side. The ruling on this case may well support the contention expressed earlier—*Kimball v. Callahan* indeed has far-reaching effects.

NOTES

1. 493 F.2d 564 (9th Cir. 1974).
2. 25 U.S.C. §§ 564-564w (1970).
3. 25 U.S.C. § 564d(2) (1970); *Klamath & Modoc Tribes v. Maison*, 388 F.2d 620, 622 (9th Cir. 1964).
4. Treaty of Oct. 14, 1864.
5. 25 U.S.C. §§ 564-564w (1970).
6. 25 U.S.C. § 564d(2) (1970).
7. *Antone v. Washington*, 420 U.S. 194 (1975).
8. Agreement May 19, 1891, with ratifying legislation by Act of July 1, 1892, and Act of June 21, 1906.
9. *Antone v. Washington*, 420 U.S. 194, 196 (1975).
10. *Id.* at 194.
11. Treaty of Oct. 14, 1864.

12. *Id.*
13. *Id.*
14. U.S. CONST. art. VI.
15. 18 U.S.C. § 1162 (Supp. 1976). "Indian Country" is (a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States, . . . (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same." 18 U.S.C. § 1151 (1966).
16. 18 U.S.C. § 1162(b) (Supp. 1976).
17. *Id.*
18. 25 U.S.C. §§ 564-564w (1966).
19. 25 U.S.C. § 564 (1966). "The purpose of sections 564 to 564w of this title is to provide for the termination of Federal supervision over the trust and restricted property of the Klamath Tribe of Indians consisting of the Klamath and Modoc Tribes and the Yahooskin Band of Snake Indians, and of the individual members thereof, for the disposition of federally owned property acquired or withdrawn for the administration of the affairs of said Indians, and for a termination of Federal services furnished such Indians because of their status as Indians."
20. 25 U.S.C. § 564m(b) (1966): "Nothing in sections 564 to 564w-1 of this title shall abrogate any fishing rights or privileges of the tribe or the members thereof enjoyed under Federal treaty."
21. 25 U.S.C. § 564w (1966). The Act provides for a taking by the United States of all tribal lands within the Klamath Indian forest which had not been sold by April 1, 1961.
22. *Kimball v. Callahan*, 493 F.2d 564 (9th Cir. 1974); *Klamath & Modoc Tribes v. Maison*, 338 F.2d 620 (9th Cir. 1964); *Klamath & Modoc Tribes v. Maison*, 139 F. Supp. 634 (D. Ore. 1956); *State v. Bojorcas*, 14 Ore. App. 538, 514 P.2d 566 (1973); *State v. Bojorcas*, 14 Ore. App. 446, 513 P.2d 813 (1973).
23. 16 Stat. 707.
24. *Klamath & Modoc Tribes v. Maison*, 139 F. Supp. 634 (D. Ore. 1956).
25. *Id.* at 637.
26. *Id.* at 636-37.
27. *Id.*
28. 71 Stat. 347 (codified in scattered sections of § 564, 25 U.S.C. (1964)).
29. *Klamath & Modoc Tribes v. Maison*, 338 F.2d 620 (9th Cir. 1964).
30. 25 U.S.C. § 564d(2) (1966). "Each member of the tribe is given an opportunity 'to elect to withdraw from the tribe and have his interest in tribal property converted into money and paid to him,' or to remain in the tribe and participate in the tribal management plan to be prepared, pursuant to paragraph (5) of this subsection."
31. *Klamath & Modoc Tribes v. Maison*, 338 F.2d 620, 621-23 (9th Cir. 1964).
32. *Id.* at 621.
33. *Id.* at 622.
34. *Id.* at 623.
35. *Id.* at 622.
36. Termination of Federal Supervision: 25 U.S.C. §§ 564-564w (1954) (*Klamath Tribe* in 1970); 25 U.S.C. §§ 677-677aa (1954) (*Ute Tribe* in 1970); 25 U.S.C. §§ 691-708 (1954) (*Western Oregon Indians* in 1970); 25 U.S.C. §§ 721-28 (1954) (*Alabama & Coushatta Tribe of Texas* in 1970); 25 U.S.C. §§ 741-60 (1954) (*Paiute*

Indians of Utah in 1970); 25 U.S.C. §§ 791-807 (1956) (Wyandotte Indians in 1970); 25 U.S.C. §§ 821-26 (1956) (Peoria Indians in 1970); 25 U.S.C §§ 841-53 (1956) (Ottawa Tribe of Indians in 1970); 25 U.S.C. §§ 891-902 (1954) repealed Pub. L. 93-197 (1973) (Menominee Tribe of Wisconsin in 1970); 25 U.S.C. §§ 931-38 (1959) (Catawba Tribe in 1970); 25 U.S.C. §§ 971-80 (1962) (Ponca Tribe of Native Americans of Nebraska in 1970).

37. Klamath & Modoc Tribes v. Maison, 388 F.2d 620, 622 (9th Cir. 1964).
38. *Id.*
39. *Id.* at 623.
40. *Id.*
41. *Id.*
42. Menominee Tribe of Wisconsin, 25 U.S.C. §§ 891-902 (1970) repealed Pub. L. 93-197 (1973).
43. State v. Sanipaw, 21 Wis. 2d 377, 124 N.W.2d 41, *cert. denied*, 377 U.S. 991 (1964).
44. *Id.* at 42.
45. *Id.* at 46.
46. *Id.*
47. *Id.*
48. Menominee Tribe v. United States, 388 F.2d 998, 184 Ct. Cl. 813 (1967).
49. Menominee Tribe of Wisconsin, 25 U.S.C. §§ 891-902 (1954) repealed Pub. L. 93-197 (1973).
50. Menominee Tribe v. United States, 388 F.2d 998, 1009-1010, 184 Ct. Cl. 813 (1967).
51. *Id.* at 1000.
52. *Id.* at 1002-1003, *citing* Klamath & Modoc Tribes v. Maison, 139 F. Supp. 634 (D. Ore. 1956).
53. State v. Sanipaw, 21 Wis. 2d 377, 124 N.W.2d 41, *cert. denied*, 377 U.S. 991 (1964).
54. Meominee Tribe v. United States, 388 F.2d 998, 1009 (Ct. Cl. 1967).
55. *Id.* at 1005.
56. 25 U.S.C. § 896 (1970).
57. *Id.*
58. Klamath & Modoc Tribes v. Maison, 139 F. Supp. 634 (D. Ore. 1956).
59. Menominee Tribe v. United States, 388 F.2d 998, 1007, 184 Ct. Cl. 813, 821 (1967).
60. 10 Stat. 1065, art. 2, Treaty of Wolf River (1854).
61. Menominee Tribe v. United States, 388 F.2d 998, 1009, 184 Ct. Cl. 813, 823 (1967).
62. *Id.*
63. *Id.* at 1010.
64. Menominee Tribe v. United States, 389 U.S. 811, *cert. granted*, 391 U.S. 404 (1968).
65. *Id.*, 391 U.S. at 406.
66. United States v. Winans, 198 U.S. 371 (1905).
67. *Id.* at 380-81.
68. Menominee Tribe v. United States, 389 U.S. 811, *cert. granted*, 391 U.S. 404, 410-11 (1968).
69. *Id.* at 411.
70. *Id.*
71. *Id.*

72. *Id.* at 412.
73. *Id.*
74. *Id.*
75. *Lone Wolf v. Hitchcock*, 187 U.S. 553, 564-67 (1902).
76. *Menominee Tribe v. United States*, 389 U.S. 811, *cert. granted*, 391 U.S. 404, 413 (1968); *Pidgeon River Co. v. Cox Co.*, 291 U.S. 138, 160 (1930). *See also* *Squire v. Capoeman*, 351 U.S. 1 (1956).
77. 389 U.S. 811, *cert. granted*, 391 U.S. 404, 413 (1968).
78. *Id.*
79. *State v. Bojorcas*, 14 Ore. App. 446, 513 P.2d 813, 814 (1973). *See* *Klamath & Modoc Tribes v. Maison*, 338 F.2d 620 (9th Cir. 1964), for an explanation of the withdrawal by the Klamaths from tribal status. The trust situation existed up until 1974 when the trust was dissolved and final payment was made to those who had refused to withdraw some 20 years earlier. *See also* *Klamath & Modoc Tribes v. United States*, 436 F.2d 1008, 93 Ct. Cl. 67, *cert. denied sub. nom.*, *Anderson v. United States*, 404 U.S. 950 (1971), for further elaboration of the termination process.
80. *State v. Bojorcas*, 14 Ore. App. 446, 513 P.2d 813 (1973).
81. 389 U.S. 811, *cert. granted*, 391 U.S. 404 (1968).
82. *Id.*
83. *Id.*
84. *State v. Bojorcas*, 14 Ore. App. 446, 513 P.2d 813, 814 (1973).
85. *Id.*, 513 P.2d at 815.
86. *Id.*
87. *State v. Bojorcas*, 14 Ore. App. 538, 514 P.2d 566, 567 (1973).
88. *Kimball v. Callahan*, 493 F.2d 564 (9th Cir. 1974).
89. *Menominee Tribe v. United States*, 389 U.S. 811, *cert. granted*, 391 U.S. 404 (1968).
90. 16 Stat. 707 (1864); 25 U.S.C. § 564 (1954).
91. *Kimball v. Callahan*, 493 F.2d 564, 566 (9th Cir. 1974).
92. *Menominee Tribe v. United States*, 389 U.S. 811, *cert. granted*, 391 U.S. 404 (1968).
93. *Kimball v. Callahan*, 493 F.2d 564, 566 (9th Cir. 1974).
94. *Id.*
95. *Menominee Tribe v. United States*, 389 U.S. 811, *cert. granted*, 391 U.S. 404 (1968).
96. *State v. Sanipaw*, 21 Wis. 2d 377, 124 N.W.2d 41, *cert. denied*, 377 U.S. 991 (1964).
97. 139 F. Supp. 634, 637 (D. Ore. 1956).
98. *Kimball v. Callahan*, 493 F.2d 564, 566 (9th Cir. 1974).
99. *Id.*
100. *Menominee Tribe v. United States*, 389 U.S. 811, *cert. granted*, 391 U.S. 404 (1968).
101. 25 U.S.C. § 564d(2) (1954).
102. 25 U.S.C. § 894 (1970).
103. *Kimball v. Callahan*, 493 F.2d 564, 568 (9th Cir. 1974).
104. 389 U.S. 811, *cert. granted*, 391 U.S. 404 (1968).
105. *Id.*
106. *Id.*, 391 U.S. at 411.
107. *Kimball v. Callahan*, 493 F.2d 564, 568-69 (9th Cir. 1974). S. 2745 and H.R. 7320, at 354-55. *See Joint Hearings of the Subcomm's. of the Comm's. on Interior & Insular Affairs*, 83d Cong., 2d Sess., pt. 4 (1954).

- 108. 25 U.S.C. § 564e(c) (1970).
- 109. *McClanahan v. Arizona Tax Comm'n*, 411 U.S. 164, 181 (1973); *Kimball v. Callahan*, 493 F.2d 564, 569 (9th Cir. 1974); *Maison v. Sams*, 5 F.2d 255, 258 (D.C. Wash. 1925).
- 110. 338 F.2d 620 (9th Cir. 1964).
- 111. *Id.*
- 112. 25 U.S.C. § 564m(b) (1970).
- 113. *Kimball v. Callahan*, 493 F.2d 564, 569 (9th Cir. 1974).
- 114. *Id.* at 559-60.