SECTION 1. CLASSIFICATION OF ALASKAN NATIVES

The term "Natives of Alaska" has been defined to include members of the aboriginal races inhabiting Alaska at the time of its annexation to the United States, and their descendants of the whole or mixed blood.1 Important native groups comprise the Eskimos, which are distinct from, although related to, the American Indian; the kindred Aleuts; and the Indians. Among the

1 The following are some of the statutory provisions defining this term:

- The Act of June 25, 1938, 52 Stat. 1169, annexing the Alaska game law, defines "Indian" to include "Natives of one-half or more Indian blood," and "Eskimo" to include "Natives of one-half or more Eskimo blood.

- Sec. 2 of the Act of April 10, 1934, 48 Stat. 594, 596, which grants special fishing privileges, to "native Indians," defines "native Indians" to mean "members of the aboriginal races inhabiting Alaska when annexed to the United States and their descendants of whole or part blood, together with the Indians and Eskimos who, since the year 1867 and prior to the enactment hereof, have migrated into Alaska from the Dominion of Canada, and their descendants of the whole or part blood.

- Sec. 19 of the Act of June 18, 1934, 48 Stat. 984, 988, provides: "For the purposes of this Act, Eskimos and other aboriginal peoples of Alaska shall be considered Indians."

- C. 89, section 142 of the Penal Code of Alaska, Act of February 6, 1909, 35 Stat. 500, 603, which makes the sale of liquor to Indians a crime, provides:

That the term "Indian...

The Indians of Alaska and Eskimos equally fall within the category of Natives of Alaska. In re Minooka, 2 Alaska 200 (1904); 49 L. D. 592 (1923); 52 L. D. 597 (1929); 53 L. D. 593 (1929).

- Dr. Alexei Arapov, Curator of Physical Anthropology, Smithsonian Institution, in The Coming of Man from Asia in the Light of Recent Discoveries, Annual Report, Smithsonian Inst. for 1935. H. Doc. No. 324, pt. 1. 74th Cong., 2d sess. (1938), p. 469, expresses the opinion that the Eskimo, though a later comer to Alaska, is a blood relation of the Indian.

The Eskimo appears to be a later offshoot from the same old stock that gave us the Indian. He came later and in two subtypes. The black-eyed, the Indian, the relation of the Indian and the Eskimo may best be perhaps be imagined as a hand with untouched fingers. The diverging fingers are the different types of the Indian; the thumb, which should be double, represents the Eskimo. The thumb is farther apart. It comes in two kinds from the same hand, which is the old or pale-Asiatic yellow-brown strain, a strain that gave us the ancestry of all the aboriginal Americans.

"Later studies by ethnologists have resulted in classifying all the natives except the Eskimo as remote offspring of the North American Indian stock." 1 Encyclopedia Britannica (14th ed. 1928), p. 902.

Indian groups are the Athapascans, Tlingits, Haidas, and Tsimshians, which include the Metlakatla. According to many reputable anthropologists, all these strains migrated to the New World by way of Bering Strait.2

- The 1940 census reports native Indians and Eskimos under six linguistic groups—Aleutian, Eskimaukt, Athapaskan, Haidan, Tlingit, and Tsimshian. All other Indians come under (United States or Canadian) Indian.


- Senator Charles Sumner alluded to this theory on April 9, 1867, in a speech before the Senate of the United States urging the ratification of the treaty between the United States and Russia for the purchase of Alaska. XI The Works of Charles Sumner (1875), p. 264. This speech (pp. 186-349) is an excellent summary of the contemporary knowledge of Alaska.

- Fifteenth Census of the United States, Outlying Territories and Possessions (1932), pp. 19, 20. On October 1, 1929, there were 19,028 Eskimos, (including the Aleuts) and 10,955 natives of other linguistic stock. The total population was 59,278, of which the natives total slightly over half, or 29,983. For a discussion of the composition and distribution of the population, see Alaska, Its Resources and Development. H. Doc. No. 495, 75th Cong., 1st sess. (1938), pp. 35-38, 183. The unreliability of much of the contemporary writings on Alaska at the time of its purchase is evidenced by the fact that its population was then variously estimated at from 54,000 to 400,000. Probably the former figure was more nearly accurate, for it was adopted by the "Almanach de Gotha" for 1867 and the "Les Peuples de la Russie," the best authority at that time, it was estimated that there were not more than 2,500.

- The chief deduction of American anthropology, in the substance of the perusal of the New World and hence must have been an Indian; which was peopled essentially from northeastern Asia. The deduction is based upon the facts that no man could have originated in the New World and hence must have been an Indian; which was peopled essentially from northeastern Asia. The deduction is based upon the facts that no man could have originated in the New World and that the only continent which appeared to have been inhabited by aborigines throughout all one fundamental race, the nearest approaches of which existed between northern Asia and the eastern Asia: and that the only practicable route for man in such a cultural stage as he must have been in at the time of his first coming to America was that between northeastern Asia and Alaska.
Ocean, the islands of Bering Sea, and the Aleutian chain, and one-third of them live north of the Arctic circle. The Aleuts inhabit the Aleutian Islands and the adjacent mainland, while the Athapaskan Indians, perhaps the most primitive, occupy the interior, reaching the coast only at Cook's Inlet. The coastal Indians, which include the Tlingits, a race of maritime nomads, the related Haidas, and the Tsimshians have their homes along the coastal area of Cook's Inlet, the Gulf of Alaska, and the shores of southeast Alaska. The natives reside in small, widely separated villages, communities, or fishing camps, scattered along the 25,000 miles of coast and on the great rivers, principally along the southern and far northwestern coast. For the most part they do not fall into well-defined tribal groups occupying a fixed geographical area. Most of them are engaged in hunting and fishing, sometimes supplementing these occupations by agriculture. The raising of reindeer provides subsistence for some and is expected to become more important in their economy. An increasing number of natives are finding wage employment.

SECTION 2. CLASSIFICATION OF NATIVES UNDER RUSSIAN RULE

In determining the status of the natives with respect to civilization and citizenship, the courts have given considerable weight to their ethnology, the state of their civilization and their relationship to the antecedent Russian Government. During the 67 years prior to acquisition by the United States of Alaska, the Russian American Company, exercised practically absolute dominion over this country. The imperial laws of Russia recognized the settled natives, including the Aleuts, Kodka, Eskimos, and Tlingits, who embraced the Christian faith, as Russian citizens, on the same footing as white subjects.

The independent tribes of pagan faith who acknowledged no restraint from the Russians, and practiced their ancient customs—were classed as uncivilized native tribes by the Russian laws.

The interest of the Russian Government in trade with the natives is indicated by the treaty made with the United States on April 17, 1824, which deals incidentally with the natives of Alaska. Article I permitted the citizens of both contracting powers to navigate and fish in the Pacific Ocean and Article IV permitted trading with the natives. Article V excepted from this commerce the sale of "spirituous liquors, fire-arms, other arms, powder, and munitions of war of every kind." Several years later, Congress implemented this treaty by the Act of May 19, 1828, which provided for the punishment of violators of Article V.

SECTION 3. TREATY OF CESSION

Alaska was ceded to the United States by Russia for $7,200,000 in gold by the treaty concluded March 30, 1867. Article III, which deals with the inhabitants makes no distinction based on color or racial origin. It 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 Treaty thus divided the Alaskan inhabitants into the following three classes:

1. Those who returned to Russia within 3 years, and thereby reserved their natural allegiance;
2. Those who remained in the territory, except "uncivilized native tribes";
3. "Uncivilized native tribes."
SECTION 4. SOURCES OF FEDERAL POWER

The primary sources of federal power over the Alaskan natives are three. First, since Alaska is a recognized territory, it is subject to the paramount and plenary authority of Congress to enact laws for the government of the territory and its inhabitants. Section 3 of the Organic Act of August 21, 1912, provides:

That the Constitution of the United States, and all the laws thereof which are not locally applicable, shall have the same force and effect within the said Territory as elsewhere in the United States.

Second, the vacant, unoccupied and unappropriated land at the date of the cession became a part of the public domain of the United States. Since 99 percent of Alaska consists of public lands, the federal control over its property is a vital source of power.

Third, it is said that Congress may enact any legislation it deems proper for the benefit and protection of the natives of Alaska, because they are wards of the United States in the sense that they are subject to the plenary power of Congress over Indian affairs.

It has been said that from the viewpoint of congressional power the question of the Indian or non-Indian origin of the natives is unimportant. In view of the broad powers over territories and wards, this statement is accurate. However, where the congressional power is derived from a source wholly applicable to Indians such as the power to regulate commerce with Indian tribes, the distinction between Indians and non-Indians must be borne in mind.

This exercise of federal power over territories, public property, and wards has been judicially sustained in two cases. The first, the Alaska Pacific Fisheries case, involved the right of the President to issue a proclamation without express statutory authority withdrawing from the public domain the waters adjacent to the Annette Islands and reserving the waters within 3,000 feet from the shore at mean low tide. The purpose of this reservation was to develop an Indian fishing industry.

The Supreme Court of the United States enjoined the defendant corporation from maintaining a fish trap in the navigable waters within the territorial limits, holding that the creation of the reservation was a valid exercise of federal power, and that it was a valid exercise of federal power, and that Congress undoubtedly had the power to reserve waters, which were the property of the United States, since it protected the food supply of the Indians. In reaching this decision, the Court stated that it was influenced by the following considerations:

- the circumstances in which the reservation was created, the power of Congress in the premises, the location and character of the islands, the situation and needs of the Indians and the object to be attained.

(P. 87.)

The Circuit Court of Appeals in a later case involving the attempt of the Territory of Alaska to encroach upon the federal control of the Indians by levying an occupation tax on the output of a private salmon cannery on the Annette Island Reservation, operating under a lease executed by the Secretary of the Interior, held that the Territory of Alaska was not authorized to levy such a tax, on the ground that the lessee was an Instrumentality of the Government to assist the Metlakatla Indians to become self-supporting. The power of the Secretary of the Interior to execute the lease was also sustained.

The exercise of federal power over other natives of Alaska has been similarly upheld. Thus, by virtue of his power to supervise the public business relating to Indians, the Secretary of the Interior may supervise a reservation created to enable the Department through the Bureau of Education to maintain a school, and may enter into a lease with a third party for the operation of a salmon cannery.

Furthermore, even prior to the extension of the Wheeler-Howard Act to Alaska, it was recognized that Congress possessed the power to create Indian reservations in Alaska.

SECTION 5. CITIZENSHIP

The Treaty of Cession provided for the collective naturalization of the members of the civilized native tribes of Alaska. Congress impliedly consented to this contract which obliged it to incorporate the inhabitants, except uncivilized tribes, as citizens of the United States, by extending certain laws to the Territory and by passing the Organic Acts of 1884 and 1912.

The difficulty of defining civilization made the legal status...
of the natives of Alaska a matter of much doubt and uncertainty. The Minook case\(^{49}\) throws some light on the distinction between civilized and uncivilized tribes. In denying the application for citizenship of the son of a Russian father and an Eskimo mother, and the husband of a native woman, Judge Wickersham held that the applicant was not a Russian citizen, though he was born in Alaska in 1849, and, together with his parents, was a member of the Greek Church and a subject of Russia at the time of thecession. The court held that Minook was a citizen of the United States by virtue of the third article of the treaty with Russia, either as one of those inhabitants who accepted the benefits of the proffered naturalization, or as a member of an uncivilized native tribe who has voluntarily taken up his residence separate from any tribe of Indians and has adopted the habits of civilized life.\(^{50}\)

In order to discover the intentions of the signatory nations, Judge Wickersham quoted and discussed portions of the charter of the Russian American Co. He also drew upon the science of ethnology to determine whether the tribe was civilized and quoted Prof. W. H. Dall\(^{51}\) of the Smithsonian Institution, as to which natives were civilized. The next year he quoted with approval portions from this opinion and again used the same technique to prove that natives belonging to the Athapaskan stock were uncivilized at the time of the cession and hence, as wards of the Government, were entitled to an injunction against the trespass of white men on their property.\(^{52}\)

The General Allotment Act gave to two additional classes of Alaskan natives the status of citizenship: (1) Allottees, and (2) nonallo tees who severed tribal relationship and adopted the habits of civilization.\(^{49}\)

The Territorial Act of April 27, 1913,\(^{52}\) provided a method whereby a nonallottee could secure a certificate of citizenship. This procedure included proof of his general qualifications as a voter, his total abandonment of tribal customs, and his adoption of the culture of civilization.

This statute became obsolete with the passage of the Citizenship Act, which included the Alaskan natives, and was finally repealed in 1933.\(^{53}\)

In the case of United States v. Lynch, the court held that though the members of the Tlingit tribe would undoubtedly have been classed as uncivilized, tier the provisions of Article III of the Treaty of Cession, they, together with other native Indian tribes of the United States, were collectively naturalized by the Citizenship Act. Consequently, proof of civilization is no longer a condition precedent to citizenship.


\(^{50}\) L. 33, 1919, p. 52. repealed by c. 34. Laws of Alaska, 1933, p. 73.

\(^{51}\) The effect of citizenship on land rights of the Alaskan natives, see sec. 8C, infra.

\(^{52}\) Act of June 2, 1924. c. 233. 43 Stat. 253. For a discussion of citizenship see Chapter 8, sec. 2.

\(^{53}\) 53 I. D. 593 (1932).

\(^{54}\) Laws of Alaska, 1933, p. 73.

\(^{59}\) 7 Alaska 568 (1927).

SECTION 6. STATUS OF NATIVES

The legal position of the individual Alaskan natives has been generally assimilated to that of the Indians in the United States.\(^{49}\) It is now substantially established that they occupy the same relation to the Federal Government as do the Indians residing in the United States: that they, their property, and their affairs are under the protection of the Federal Government; that Congress may enact such legislation as it deems fit for their benefit and protection; and that the laws of the United States with respect to the Indians resident within the boundaries of the United States proper are generally applicable to the Alaskan natives.\(^{55}\)

For example, it has been administratively held that the general laws enacted by Congress empowering the Secretary of the Interior to probate the estates of deceased Indians are applicable to Alaskan natives.\(^{49}\)

\(^{49}\) L. D. 592 (1923); 53 I. D. 593 (1932).

\(^{50}\) Delegate A. J. Dimond, of Alaska, has said (83 Cong. Rec. pt. 9. pp. 179-180, 75th Cong., 3d sess. 1938) :

*... special appropriations for the education and medical welfare of the natives of Alaska ...* was based upon the theory that the Government, and therefore Congress, does owe a special duty to the natives of Alaska. (P. 180.)

*... analogous to that owed by a guardian to his ward, a trustee to the beneficiary, or the trust, or a father to his children. (P. 182.)

*... the law is bound in honor and good morals to enact suitable measures for their benefit and their economic welfare. (P. 180.)

\(^{51}\) L. D. 597 (1929); 53 I. D. 593 (1932); Alaska Pacific Fisheries Case, supra; United States v. Burgess, 2 Alaska 442 (1903); United States v. Cudowne, 5 Alaska 125 (1914); Territory of Alaska v. Annette Island Packing Co., 289 Fed. 671 (C. C. A. 9, 1923), cert. den. 263 U. S. 708 (1923).

\(^{52}\) Op. Sol. 1. D. M. 27127. July 26, 1932, and cf. sec.1919, Compiled Laws of Alaska, 1933, referring to ward Indians. Also see 54 I. D. 11 (1932), in which the Solicitor of the Department of the Interior ruled that although the provisions of the Act of June 25, 1910, 36 Stat. 585, as amended, which relates to the administration of the restricted property of deceased Indians, are applicable to Alaskan natives, a subordinate officer, such as an employee of the Reindeer Service, lacks the power to settle such estates.

\(^{49}\) L. D. 592. 594-595 (1932). This portion of the opinion was quoted with approval in 53 I. D. 593 (1932). But cf. 19 L. D. 328. 324-325 (1904).
Later, however, Congress began to directly recognize these natives as being, to a very considerable extent at least, under the Government's guardianship and enacted laws which protected them in the possession of the lands they occupied; made provision for the allotment of lands to them; in severality, similar to those made to the American Indians having special hunting, fishing, and other particular privileges to enable them to support themselves, and supplied them with reindeer and instructions as to their propagation. Congress has also supplied funds to give these natives medical and hospital treatment and they made an effort to make the Indians independent of the United States for medical and educational purposes to defray the expenses of both their education and their support.

Not only has Congress in this manner treated these natives as being wards of the Government, but they have been repeatedly recognized by the courts. See Alaska Pacific Fisheries v. United States (248 U.S. 78); United States v. Herrigan et al. (2 Alaska Reports, 442); United States v. Udsov et al. (16 Fed. No. 116, 125); and the unpublished decision of the District Court of Alaska, Division No. 1, in the case of Territory of Alaska v. Annette Island Packing Company et al., rendered June 15, 1932.

From this it will be seen that these natives are now unquestionably considered and treated as being under the guardianship and protection of the Federal Government. At least to such an extent as to bring them within the spirit, if not within the exact letter, of the laws relative to American Indians; and this conclusion is supported by the fact that in creating the territorial government of Alaska and in providing for the administration of its internal legislation and control over its internal affairs, including public schools, Congress expressly excluded from that legislation and control the schools maintained for the natives and declared that such schools should continue to remain under the control of the Secretary of the Interior.

An explanation of the reasons for this changing policy will be helpful in understanding the legal position of the Alaskan natives. The United States at first followed the example of Russia. From 1867 to 1884, when the Organic Act of 1864 made Alaska a civil and judicial district, this vast land had hardly the shadow of a civil government and was little more than a geographical subdivision of the United States. Save for the casuistic activity of the military authorities, the natives shifted for themselves.

This neglect is indicated by the failure of the United States to provide a regular agent for them, as in the case of Indians generally. The responsible duties of such an official were delegated to a military commandant.

One of the few exceptions to the failure to enact legislation was the extension of prohibitory liquor laws to Alaska. However, these laws were flagrantly violated and little attempt to enforce them was made during the first two decades of American rule.

Although the purchase of Alaska on June 30, 1867, occurred while the United States still was making treaties with Indian tribes, no attempt was made to enter into treaties with the natives. This was primarily because the reasons which were responsible for treaty making by the Federal Government with the American Indians were not present in Alaska, where there was not considered Indian country until 1873 when sections 30 and 4 of the Trade and Intercourse Act, prohibiting liquor traffic in Indian country, and with the Indians, were extended to include this territory. There was therefore no necessity for treaties extinguishing Indian title. The legal theory was adopted of considering these Indians subjects and not dependent or domestic nations having titles to be extinguished. Reservations were not established with the exception of the Annette Island Reservation and those for educational purposes.

There was an absence of federal laws in most fields and even the few which were considered applicable to Alaska were not enforced. Questions concerning the effect of tribal laws and customs were rarely raised. In re Soo Quah was one of the few cases in which this issue was directly involved. In granting a writ of habeas corpus to the petitioner, a slave of a Tlingit Indian, the court said:

What, then, is the legal status of Alaska Indians? Many of them have connected themselves with the mission churches, manifest a great interest in the education of their youth, and have adopted civilized habits of life. Their Condition has been gradually changing until the attributes of their original sovereignty have been lost, and they are becoming more and more dependent upon and subject to the laws of the United States, and yet they are not citizens within the full meaning of that term. (P. 326-329.)

The United States has at no time recognized any tribal independence or relations among these Indians, has never treated with them in any capacity, but from every act of congress in relation to the people of this territory it is clearly inferable that they have been and now are regarded as dependent subjects, amenable to the penal laws of the United States, and subject to the jurisdiction of its courts. Upon a careful examination of the habits of these natives, of their modes of living, and their traditions, I am inclined to the opinion that their system of government is essentially patriarchal, and not tribal, as we understand that term in its application to other Indians. They are practically in a state of punishment, and sustain a degree of state similar to that of a ward to a guardian, and have no such independence or supremacy as will permit them to sustain and enforce a system of forced servitude at variance with the fundamental laws of the United States. (P. 323.)

Nevertheless, tribal custom and law is recognized in some cases. In the absence of federal legislation, a marriage between the natives belonging to the uncivilized tribes, such as the Athapascans, when entered into according to long-established times and usages, will be respected by the courts of the United States. (P. 326.)

See Chapter 3, sec. 4.
See Chapter 1, sec. 3, and Chapter 17, fn. 85.
Because of the restriction of native activities which accompanied the reservation policy among the Indians of the continental United States; the natives of Alaska, with the exception of the transplanted body of Kutchins, argued the opinion of the development of reservations in Alaska. This opposition was part of an insistent resistance to racial discrimination.

A license to trade in Alaska is not required. See Staters v. Campbell, 10 Fed. Cas. No. 17264 (C. O. Ore. 1876); and see Chapter 16, sec. 2.
54 1. D. 30 (1832).
Customs, is valid, irrespective of the territorial laws regulating marriage among the inhabitants. The extension of the Wheeler-Howard Act to Alaska has removed almost the last significant difference between the position of the American Indian and that of the Alaskan native. The Act of February 25, 1925, c. 320, 43 Stat. 978. authorizes the Secretary of the Interior to establish a system of vocational training for the children of school age in the Territory of Alaska, without regard to race or color, for purposes, “to purchase of Indian "products applies to Alaskan natives, the Solicitor said:

In considering the application to Alaskan natives of laws relating to Indians it is well to bear in mind the following point: The laws which relate specifically to Alaska normally define the terms "natives" or "Indians" and define them as including Indians, Kajipees, Alaskans and other aboriginal tribes. Illustrations of such laws are the Alaskan Reorganization Act, the Act penalizing the sale of liquor or firearms to Indians in Alaska (see, e.g., chap. 12, sec. 3 of March 5, 1899, 30 Stat. 1233), and various acts appropriating funds for the education of the natives. However, the Director of the Division of Territories and Island Possessions, Department of the Interior, for 1936 lists the "protection of the welfare of the native population," as the first of the "immediate considerations for the attainment of major ends." The report of the Director of the Division of Territories and Island Possessions, Department of the Interior, for 1936 lists the "protection of the welfare of the native population," as the first of the "immediate considerations for the attainment of major ends." The use of the term "indianization" as used in this case was an issue in the case of Davis v. Sitka School Board. In denying the petition for a writ of mandamus to require the school board to admit the plaintiff's children who were of mixed blood, the court took the view that the policy of "Indianization" is achieved only when the children have adopted the white man's way of life and associated with white men and women. The interpretation of the term "civilization" as used in this statute was made in the case of Davis v. Sitka School Board.

SECTION 7. EDUCATION

From 1884 to March 16, 1931, the Bureau of Education, rather than the Office of Indian Affairs, controlled native education and welfare work. Such service presents peculiarly difficult and important administrative problems.

The area of Alaska is about one-fifth the size of the United States. Many settlements are beyond the limits of transportation and regular mail service, and one-third of the natives live north of the Arctic Circle. Villages are usually far apart and transportation is largely limited to boats for coastal travel, dog teams for interior travel, and aeroplanes. Even on the coast and rivers, boats are infrequent, and in the winter can be used only in the south.

Neither the federal control over education on reservations, nor the system of annuities for educational purposes, nor the boarding school program was carried into this Territory. The importation of reindeer, and instruction in herd management were included as incidental to education. Originally no differentiation was made between the education of the natives and the whites. As a result of the Act of January 27, 1905, a dual system of education was instituted; one part was mainly devoted to white children and the other to the children of the Natives.

The interpretation of the term "civilization" as used in this statute was made in the case of Davis v. Sitka School Board. In denying the petition for a writ of mandamus to require the school board to admit the plaintiff's children who were of mixed blood, the court took the view that the policy of "Indianization" is achieved only when the children have adopted the white man's way of life and associated with white men and women.

United States v. Sitaramyok, 4 Alaska 667 (1913).


The Organic Act of 1884 (Act of May 17, 1884, sec. 13. 23 Stat. 24. 27) authorizes the Secretary of the Interior to provide "for the education of the children of school age in the Territory of Alaska, without reference to race. . . ."

This phrase was repeated in other appropriation acts, such as the Act of March 3, 1899, 30 Stat. 1074, 1101.

33 Stat. 616, 619, sec. 7:

* * * schools for and among the Eskimos and Indians of Alaska shall be provided for by an annual appropriation, and the Eskimos and Indians of Alaska shall be entitled to all the rights and privileges of the Indian school boards as to admission into any educational institution, whether boarding school or other of the United States.

* * * 3 Alaska 461 (1908). The court laid down the following test of civilization:

* * * as to whether or not the persons in question have turned aside from old associations, former habits of life, and easier modes of existence, in other words, have exchanged the old barbaric, uncivilized environment for a changed, new, and superior mode of existence, what is it, as to indicate an advanced and improved condition of mind, which desires and reaches out for something altogether distinct and unlike the old life? (c. 488.)

Civilization * * * included more than a prosperous business, a trade, a house, white man's clothes, and membership in a church or other institution.

The attitude of another court toward the native culture is brought out in the case of In re Can-An-Goon, 29 Fed. 687 (D. C. Alaska 1887), involving the rights of a mother of a child attending a mission school. The case is discussed in Chapter 12, fn. 62.

* * * Considerable stress was placed on the fact that the playmates of the children were native and that the children joined in the hunting
The territorial legislature was first granted power over schools by the Act of March 3, 1817, which empowered it to "establish and maintain schools for white and colored children and children of mixed blood who lead a civilized life." Pursuant to this act, a writ of mandamus was granted compelling the city of Ketchikan, Alaska, to admit its school attended by the white resident child of mixed blood who led a civilized life, although she could attend an Indian school in the city, and thereby make room for the attendance of nonresident white children. The court said:

"The legislative power of the territory of Alaska with regard to schools derived from this section makes no provision for the segregation of races, nor does it refer to the race or color of the children to be provided for. In the territorial schools, and such act must necessarily be construed in the light of the section quoted limiting the authority of the Legislature to provide schools for white and colored children and children of mixed blood."

Only mission schools existed between 1867, the date of the purchase of Alaska, and 1884. Thereafter, until 1900, annual federal appropriations, ranging from a few thousand dollars to $50,000 were made for the education of native and white children. For the next 5 years education was supported by a "license tax." Schools in incorporated towns were under local control, while the Secretary of the Interior continued to direct rural schools. Beginning with 1905, annual appropriations in increasing amounts were made enabling the Secretary of the Interior, in his discretion, to provide for the education and support of the natives of Alaska. The territorial schools established in 1905 were supported by territorial and federal funds and fishing expeditions of the native bands. Apparently the court did not recognize that hunting and fishing were recreations of social significance among the whites and a source of livelihood for some whites and many natives.

The schools were under the general supervision of the Territorial Board of Education authorized by the Legislature of Alaska, Spicer, op. cit., p. 99.

Jones v. Ellis, 8 Alaska 146 (1929).


The first statute, the Act of July 4, 1884, 23 Stat. 74, 91, appropriated $15,000. Some appropriation acts, during this period, authorized the Secretary of the Interior to use a specified sum from the general education appropriation "for the education of Indians in Alaska," e.g., Act of March 2, 1895, 28 Stat. 876, 904.


and served, white children and "children of mixed blood who lead a civilized life." The land is unsuitable for agriculture. Therefore, much greater attention must be paid to other forms of property.

A. FISHING AND HUNTING RIGHTS

Fishing is the most important industry of Alaska and from time immemorial has been the principal source of food for the


Although the gross area of the land and water of Alaska is 586,400 square miles, only about 65,000 square miles are suitable for agriculture, 1084, p. 7, and see Alaska, Its Resources and Development, op. cit., p. 114.

See Sec. 3 of the Organic Act of Alaska, Act of August 24, 1912, c. 387, 52 Stat. 114, which provides that the authority granted to the Territorial legislature shall not extend to general laws of the United States or to the "game, fish, and fur-seal laws and laws relating to fur-bearing animals of the United States applicable to Alaska.

Alaska, Its Resources and Development, op. cit., pp. 17, 41, 55-74. See Pacific Fisherman Yearbook (1939). There were 30,331 persons

SECTION 8. PROPERTY RIGHTS

Problems relating to the property rights of Alaskan natives arise out of their activities in hunting and fishing, their use and ownership of land and their ownership of reindeer. Land, except mineral land, is comparatively unimportant in the Alaskan economy. This is due to the fact that the population is sparse (averaging one person per 10 square miles) and that most of the


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See Sec. 3 of the Organic Act of Alaska, Act of August 24, 1912, c. 387, 52 Stat. 512, provides that the authority granted to the Territorial legislature shall not extend to general laws of the United States or to the "game, fish, and fur-seal laws and laws relating to fur-bearing animals of the United States applicable to Alaska. * * * * * *
natives. Fur production is third in rating of all commodities in Alaska as to total value. Fur trading was the primary occupation of the Russians who came to Alaska during the latter half of the eighteenth century. Since that time the natives have depended on fur trading for a substantial part of their livelihood.

The Bureau of Fisheries, formerly with the approval of the Secretary of Commerce, and now with that of the Secretary of the Interior, drafts fishing regulations specifying the areas in which traps may be operated, and their number. A license for a trap must be obtained from the territorial treasurer, and to prevent obstructions to navigation, the Secretary of War must authorize the plans. In 1927 the number of traps in operation reached almost 800, but there has subsequently been a steady decline in this figure.

Judicial and legislative cognizance has been taken of the importance of fishing and hunting in the native economy. The Supreme Court of the United States in the Alaska Pacific Fisheries case so said:

They (the Metlakatlans) were largely fishermen and hunters, accustomed to live from the returns of those vocations, and looked upon the islands as a suitable location for their colony, because the fishery adjacent to the shore would afford a primary means of subsistence and a promising opportunity for industrial and commercial development (P. 88.)

In many conservation statutes the natives are given special privileges. The Act of July 1, 1870, makes unlawful the killing of fur seals upon the Pribilof Islands except during the months of June, July, September, and October in each year, and the killing of such seals at any time by firearms. The privilege of killing of young seals necessary for clothing and old seals necessary for clothing and boats by the natives for their own use was permitted, subject to regulations of the Secretary of the Treasury.

The validity of section 6 of the Act of July 27, 1888, which prohibits the killing of fur-bearing animals within the limits of the Territory, or in the waters thereof, and empowers the court, in its discretion, to confiscate vessels violating this statute, held in The James G Swain case. The report of the United States District Court for the District of Alaska, 224 (1904), 334, 347 (1917). The Act of April 6, 1894, prohibits the killing of fur seals by United States citizens in waters of the Pacific Ocean surrounding the Pribilof Islands. It also prohibits the killing of fur seals from May 1 to July 31 in a circumscribed part of the Pacific Ocean, including Bering sea. Section 6 permits Indians dwelling on the coasts of the United States to take fur-bearing seals in open, unpowdered boats not manned by more than five persons using primitive methods, excluding firearms. Such fishing may not be done pursuant to a contract of employment. The Act of December 29, 1897, prohibiting the staying of fur seals in the North Pacific Ocean contained a similar exemption.

Section 3 of the Act of April 21, 1910, provides that whenever seals are taken, the natives of the Pribilof Islands shall be employed in such killing and shall receive fair compensation. Section 5 permits the natives of these islands to kill such young seals as may be necessary for their own clothing and the manufacture of boats for their own use, subject to regulations prescribed by the Secretary of Commerce. The Act establishes this right, requires the Secretary to furnish food, clothing, shelter, and other necessities to the native inhabitants and to provide for their education.

The Act of August 24, 1912, gave effect to the Convention of July 7, 1911, between the United States, Great Britain, Japan, and Russia.