



INTERIOR BOARD OF INDIAN APPEALS

Estate of San Pierre Kilkakhan (Sam E. Hill)

4 IBIA 93 (07/11/1975)

Reconsideration denied:

5 IBIA 12

Related Board case:

1 IBIA 299

4 IBIA 242

Dismissed, *Sam v. Kleppe*, No. C-76-14 (E.D. Wash. Jan. 26, 1976)

7 IBIA 240



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ESTATE OF SAN PIERRE KILKAKHAN (SAM E. HILL)

IBIA 75-37
(Supp. IBIA 72-9, 1 IBIA 299)

Decided July 11, 1975

Appeal from an Order of the Administrative former findings after hearing on remand.

Reversed.

APPEARANCES: Nansen & Price, by Richard B. Price, Esq., for appellants; Rudolf and Grant, by Robert D. Dellwo, Esq., for appellees.

OPINION BY ADMINISTRATIVE JUDGE SABAGH

San Pierre Kilkakhan or Sam E. Hill, Colville Allottee S-1078, died intestate February 2, 1967. At a hearing held on August 15, 1967, Alice May Tatshama appeared claiming to be a daughter of the decedent and Lilliam Williams Tatshama.

By his order determining heirs issued September 14, 1967, the Judge disallowed her claim and held that decedent had died intestate, unmarried without issue, father, mother, brother, sister, or issue of deceased brothers or sisters. He determined that decedent's heirs, "second cousins," in the fifth degree of relationship, Hattie Condon Marquez and Alfred McCoy, were to share equally in the estate. The record shows them to be a grand niece and grand nephew of decedent's mother Madeline Louise Kilkakhan (Quin-ho-pe-tsa).

At the hearing a claim of relationship to the decedent was presented by Madeline Bone Wells and Sarah Bone McCraigie, representing themselves, a non-appearing brother, Joseph Bone, and the heirs of any of their other brothers and sisters who might be dead. Their allegation was that this decedent was the son of Edward Kilkakhan, and Madeline Louise Kilkakhan (Quin-ho-pe-tsa) both deceased. They allege that their own father, Narcisse Jim or Bone was a maternal half brother of Edward Kilkakhan, father of the decedent.

The Judge's ruling in the first order of September 14, 1967, was that the claim of relationship as first cousins by Madeline Bone Wells and Sarah Bone McCraigie is "* * * not supported by any of the records of the Department. The preponderance of the evidence is to the effect that the decedent's father, Edward Kilkakhan, had no brothers and sisters."

The appellants petitioned for rehearing which was held on May 21, 1968. At that time it was stipulated and agreed among the parties that the appellees, Hattie C. Marquez and Alfred McCoy are second cousins (5th Degree) to the decedent.

After the rehearing, in his order reaffirming the original order determining heirs, the Judge made the following findings:

As stated in the original Order, the allegations of the Petitioners are not supported by any records of the Department of the Interior, in that Quin-ho-pe-tsa was the mother of Narcisse Bone (Barcisse Jim), a Canadian, who died in 1926, and that Quin-ho-pe-tsa was also the mother of Edward Kilkakhan, who was the father of the instant decedent.

The pertinent part of the testimony of the witnesses as to decedent's ancestry is based on hearsay.

The relation of Hattie Condon Marquez and Alfred McCoy is substantiated by the records of the Interior Department and testimony presented in the original hearing. Petitioners have stipulated that the relation of these 2 persons to the decedent is as shown in the Original Order Determining Heirs. (Emphasis supplied)

A petition for a second rehearing based upon new evidence in the minutes of the Enrollment Committee of the Colville Reservation was barred because the Judge was without jurisdiction to grant it. See 43 CFR 4.241 (e). An appeal was then taken to this Board. The Board issued a decision on September 15, 1972, remanding the case for a further hearing based upon reasons set forth therein. These reasons are not repeated but the decision of September 15, 1972, is incorporated herein by reference. A hearing was held on January 9, 1973, in Spokane, Washington, and an Order reaffirming his former findings was issued by the Judge on October 30, 1974. It was stipulated therein that Madeline Bone Wells, Sarah Bone McCraigie and Joseph Bone, are Canadian Nationals.

An appeal was taken to this Order on or about December 18, 1974.

The basic issue before this Board is whether Edward Kilkakhan, father of the decedent, had a half brother, Narcisse Bone, father of the appellants.

The appellants Madeline Bone Wells and Sarah McCraigie testified that their father, Narcisse Bone (Jim) and Edward Kilkakhan were half brothers; that they had the same mother but different fathers; and that the decedent San Pierre Kilkakhan or Sam Hill was the son of Ed Kilkakhan and their first cousin. This testimony was uncontradicted. Moreover, this testimony was corroborated by George Lezard and Harry Robinson who knew Ed Kilkakhan and Narcisse Bone (Jim), by Madeline Moses and Matilda Gabriel who were told of this relationship by their respective grandmothers and by Matilda Robinson who was told of this relationship by her mother.

This relationship was in turn further corroborated by documentary evidence from the certified records of the Colville Confederated Tribes Enrollment Committee Hearings held on May 13, 14, and 15, 1953, wherein Edward Kilkakhan testified (though unsworn) that Narcisse Bone, father of Madeline Bone Wells was his half brother. In addition thereto, the Colville records on the decedent entitled "Individual History Card" show Edward Kilkakhan to be the half brother of Narcis Jemalix also known as Narcisse Bone (Jim), father of the appellants.

The Judge places absolute reliance on the testimony of several witnesses who apparently had no knowledge of the paternal ancestry of the decedent, and the stipulation entered into by the parties to the effect that Alfred McCoy and Hattie Condon Marquez are second cousins (5th degree) of the decedent. Further, the Judge gives the greatest weight to what he calls "the records of the Interior Department" which up to now have not been offered in evidence. Nonetheless these so called records consist of a form entitled "Summary of Family History and Inventory" prepared by the Bureau of Indian Affairs to assist the Administrative Law Judge in his probate of decedent's estate. The family history portion of the form is unsigned, nor does it indicate where or when or from whom the information contained therein was acquired. Such family history summaries have consistently been contradicted and refuted and without more never were intended to constitute evidence of the alleged facts contained therein.

The Judge concludes that the evidence offered by the appellants in the form of sworn testimony of several witnesses as being hearsay and the copy of the Colville records of the

