

BEFORE THE INDIAN CLAIMS COMMISSION

CLYDE F. THOMPSON, WILLIAM FULLER,)
 HERBERT A. BELLAS, HENRY MILLER,)
 MANUEL CORDOVA, ARCHIE McWHINNEY,)
 LLOYD BARRINGTON, SATURNINO E. CALAC,)
 W. G. WALKER, LAWRENCE BURCELL,)
 FRANKIE MOOREHEAD and ARTHUR TREPPA,)
 members, and as the representatives)
 of, and on the relation of the)
 INDIANS OF CALIFORNIA,)
)
 Petitioners,)
)
 vs.)
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)

Docket No. 31

Ernest L. Wilkinson and John W. Preston,
 with whom were Francis M. Goodwin,
 Frederic A. Baker, Sam Clammer, Paul M.
 Niebell and John W. Preston, Jr.,
 Attorneys for petitioners.

Ralph A. Barney, with whom was A. Devitt
 Vanech, Assistant Attorney General,
 Attorneys for defendant.

MAY 6 1949

OPINION

PER CURIAM: A motion to dismiss the original petition was filed herein by the defendant and presented to the Commission on March 21, 1949, and orally argued by the attorneys for all the parties to said original petition. There was also argued at said time a similar motion directed to the petition in the case, Federated Indians of California v. United States, Docket No. 12. At the conclusion of the arguments in this case and Docket No. 12, counsel for the claimants in both cases informed the Commission of their intention to consolidate the two cases and file an amended petition to effectuate such consolidation and at the same time requested the Commission to postpone its ruling

on such motion until after such consolidation. It was also agreed in open hearing by the claimants in said two cases and the defendant that the motion to dismiss in this cause should be considered as though directed to the amended petition, and without further oral argument.

And it now appearing to the Commission that an amended petition was filed herein on the 28th day of April, 1949 and that the petition in said cause, Docket No. 12, has been dismissed, the Commission does now consider the motion of the defendant to dismiss as though directed to the sufficiency of the amended petition.

As shown by the allegations of paragraph I of the amended petition, this claim is submitted by twelve named persons who are members of an alleged identifiable group known as the Indians of California, and who are acting as representatives of and on behalf of that group.

The Indians of California are defined in Par. II of the amended petition as follows:

II. Definition of Indians of California:

The Indians of California constitute an identifiable group of Indians composed of all Indians who were residing in the State of California on June 1, 1852, and their descendants now living, as set forth by the Act of May 18, 1928 (45 Stat. 602), as amended by the Acts of April 29, 1930 (46 Stat. 259), and June 30, 1948 (Public No. 852, 80th Cong., 2d Sess.). This identifiable group includes the descendants of members of what have sometimes been loosely described as tribes, bands, rancherias, and villages of Indians of California, and other individual Indians, who resided in California at the time of the promulgation of the Treaty of Guadalupe Hidalgo in 1848 (9 Stat. 922). Members of the group who were born prior to May 18, 1928, were enrolled as Indians of California by direction of the Act of Congress approved May 18, 1928 (45 Stat. 602), as amended by the Act of April 29, 1930 (46 Stat. 259). Members of the group who were born subsequent to May 18, 1928, are to be enrolled by direction of the Act of Congress approved June 30, 1948 (Public Law 852; 2d Sess.; 80th Cong.).

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And it is further alleged that said Indians of California have been known and recognized by administrative and legislative action of the defendant as an identifiable group and a legal entity.

Thus, it is claimed that all the Indians in California whose names appear upon the rolls, taken or to be taken under the Acts of Congress governing the enrollment of such Indians, are interested in the claim.

It is further alleged in the amended petition that the Indians of California have no tribal organization recognized with authority to represent such group.

The defendant's motion to dismiss is based upon the following two grounds: (1) That the "Indians of California" are not an identifiable group of Indians as is contemplated by Section 10 of the Act of August 13, 1946 (60 Stat. 1049), and (2) that the "Indians of California" has no tribal organization recognized by the Secretary of the Interior.

In support of the motion counsel for the Government, in their briefs, advance two main propositions, more or less related.

The first ground for dismissal is based upon a construction of the statute (sec. 2, 60 Stat. 1049) creating the Indian Claims Commission. It is contended that the phrase "Identifiable group", cannot apply to or cover the Indians of California because an "identifiable group" must be an organization of Indians political in character, that is, it must be similar to a tribe or band, which are recognized as political entities. We have this day decided in the Loyal Creek case, Docket No. 1, that an "identifiable group" may be a group of Indians outside the groups generally known and described as tribes or bands, and that it may be a group non-political in character. The conclusions reached

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in that case apply here, in so far as the contention of the Government concerns the question that the Indians of California must be a political group in order to prosecute its claim before this Commission.

The next contention of the defendant is that the designation, Indians of California, must be considered solely as a geographical division of Indians because, it is claimed, that in reality the Indians of California consist of more than 200 separate tribes, bands or groups which are of a political character and, consequently, can not herein be joined as a single entity or group. In support of defendant's position there are cited in the briefs, cases decided by the courts, with quotations therefrom, and it has submitted excerpts from Government publications, reports, etc., tending to support the defendant's position of the political status of the Indians of California.

On the other hand, the petitioners, in their brief and amended petition, cite many Congressional acts, and submit in their brief, excerpts from Congressional Committee hearings decisions of courts, etc., as evidence tending to support their position that the Indians of California is a recognized legal entity authorized by the Act of August 13, 1946, to prosecute their claim.

From the above brief summary of the contentions of the parties it will be seen that an issue of an important fact has been raised, which we are asked to determine on what is in reality a motion for a summary judgment. (See sec. 11(b) of the Rules of Procedure.)

To add to the dilemma, seventeen groups of so-called Mission Indians located in the State of California have filed a joint motion in this cause (although before the filing of the amended petition herein) in which they claim to be groups with organizations separate from and independent of the Indians

of California and who have claims of their own which they desire to prosecute in their respective capacities.

The above is sufficient, we believe, to show the importance of the questions raised by the motion and the need of a full hearing on the issue of fact involved. The above references also show the impropriety of determining such important issues on a motion such as is presented here. In our opinion the issues of fact involved in this case as to legal status of the group, for which the claim herein is presented, are of such importance and difficulty they should only be determined when raised by an appropriate pleading and after hearing the evidence on the issues of fact so raised.

In view of the above, it follows that the defendant's motion must be overruled.

May 6, 1949