



petitions for the purpose, as they say, to make it plain that they are claiming right to the use and occupancy of the some 8,800,000 acres of land in California covered by Spanish and Mexican grants recognized by the Treaty of Guadalupe Hidalgo and validated by the United States.

Since the allegations in the petitions in Dockets 31 and 37 are essentially the same, in fact, as to the matters hereafter discussed, are almost identical, we shall consider the allegations of the petition in Docket No. 31, since the conclusions we reach apply with equal force to the petition in Docket No. 37, the real plaintiffs being the same in each docket.

The sole question raised by the proposed amendment is whether under the allegations of the petition in Docket 31, fairly construed, claim has been made for all lands in California, which include the grants. We think a fair construction of the pleading, read as a whole, indicates a purpose to claim aboriginal occupancy of all the lands within the State of California, including the grants. In paragraph VI of the petition, reference is made to the fact of the Indians "owning and enjoying the sole and undisputed use, occupancy and possession, in the accustomed Indian manner, of all the lands in the State of California." Similar language appears in paragraphs VII and VIII. And the prayer seeks an "account of the grants and acreages approved under the Act of March 3, 1851" and for compensation for the lands lost.

The Government's objection to the proposed amendment is that the following allegations of the petition:

"At the time of the proclamation of the Treaty of Guadalupe Hidalgo, on July 4, 1848, the Indians of California still owned and had immemorial possession and were entitled to the sole use, occupation and possession, in the accustomed Indian manner, of all the land within the present boundaries of the State of California, except such lands as had been granted to others by the Kingdom of Spain or the Republic of Mexico, the title to which was subsequently recognized by the United States, the exact acreage of which is unknown to petitioners but is known to defendant;"

expressly exclude from the claim the 8,800,000 acres of the granted land and adding to the above-quoted allegations the following (the proposed amendment):

"as to which lands in grants from Spain and Mexico nonetheless the Indians of California, pursuant to the laws of Spain and Mexico, retained and owned an interest of use and occupancy;  
\* \*"

would create a new, different or enlarged cause of action.

The above-quoted part of the petition does state that at the time of the Guadalupe Hidalgo treaty, the plaintiffs still owned and were entitled to the sole use and possession of all the lands within the boundaries of California, except the granted lands, and if this language stood alone we would be inclined to agree with the Government's contention, but when read in connection with other allegations of the petition, some of which have been referred to, there would appear to be a conflict which must be resolved. It can be said of the quoted allegations from paragraph IX that they mean that the grants deprived plaintiffs of the use and possession of such lands as were covered by the grants, but that is far from a disclaimer of rights therein, especially in view of other allegations of the petition indicating a claim for all the California lands.

In view of our rule that all pleadings shall be so construed as to do substantial justice (Sec. 7 (3) (c)), we believe the amendment should be allowed and an order will be made accordingly. And since the amendment relates back to the commencement of the action, it is not affected by the five-year limitation.

We wish to make it plain that we are here only passing upon a procedural question and intimate no opinion on the merits of the plaintiffs' claim of interest in the lands included in the validated grants as that involves an issue of law and fact which must be determined when we decide the question of liability.

What has been said above applies to Docket 37, and an order allowing the amendment in that docket will be entered.

Edgar E. Witt  
Chief Commissioner

Louis J. O'Marr  
Associate Commissioner

Wm. M. Holt  
Associate Commissioner