

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 re  
lation of the Indians of California,

Petitioners,

v.

Docket No. 31

THE UNITED STATES OF AMERICA,

Defendant.

and

ERNEST RISLING, PETER MASTEN,  
MARY G. DORNACH, as the repre-  
sentatives of, and on the relation  
of the Indians of California,

Plaintiffs,

v.

Docket No. 37

THE UNITED STATES OF AMERICA,

Defendant.

Decided: July 31, 1959

FINDINGS OF FACT

The Commission makes the following Findings of Fact:

1. Suits Instituted and Consolidated: Pending litigation in Dockets

Nos. 31 and 37 was instituted by timely petitions under the Act of August 13, 1946 (60 Stat. 1049). The petitions were each duly amended and each amended petition states identical claims.

The amended petitions in each case were filed by individuals, "members, and as representatives and on the relation of the Indians of California." The two proceedings, by order of the Commission dated November 19, 1953, were "consolidated in their entirety and tried as a single action." The petitioners in Dockets Nos. 31 and 37, by their respective counsel, stipulated on December 13, 1954, that the cases be consolidated in their entirety and for all purposes and shall be prosecuted as one action.

2. Jurisdiction of Commission: The claimants in each of the two amended petitions in Dockets Nos. 31 and 37 assert jurisdiction in the Commission under the provisions of Section 2 of the Indian Claims Commission Act of August 13, 1946, supra, which reads in part as follows:

"Sec. 2. The Commission shall hear and determine the following claims against the United States on behalf of any Indian tribe, band, or other identifiable group of American Indians residing within the territorial limits of the United States or Alaska: (1) claims in law or equity arising under the Constitution, laws, treaties of the United States, and Executive orders of the President; (2) all other claims in law or equity, including those sounding in tort, with respect to which the claimant would have been entitled to sue in a court of the United States if the United States was subject to suit; (3) claims which would result if the treaties, contracts, and agreements between the claimant and the United States were revised on the ground of fraud, duress, unconscionable consideration, mutual or unilateral mistake, whether of law or fact, or any other ground cognizable by a court of equity; (4) claims arising from the taking by the United States, whether as the result of a treaty of cession or otherwise, of lands owned or occupied by the claimant without the payment for such lands of compensation agreed to by the claimant; and (5) claims based upon fair and honorable dealings that are not recognized by any existing rule of law or equity. . ."

3. Individual Petitioners: The amended petitions in Dockets Nos. 31 and 37 were each presented to the Commission on behalf of the Indians of

California, an unorganized group of California Indians, by individual members thereof, as authorized under the provisions of Section 10 of the Indian Claims Commission Act of August 13, 1946, supra, which reads as follows:

"Sec. 10. Any claim within the provisions of this Act may be presented to the Commission by any member of an Indian tribe, band, or other identifiable group of Indians as the representative of all its members; but wherever any tribal organization exists, recognized by the Secretary of the Interior as having authority to represent such tribe, band, or group, such organization shall be accorded the exclusive privilege of representing such Indians, unless fraud, collusion or laches on the part of such organization be shown to the satisfaction of the Commission."

4. The United States acquired the lands in California not covered by private land grants made by Spain or Mexico prior to May 13, 1846 (Art. 2d of the Protocol of May 26, 1848) by virtue of the cession from the Republic of Mexico contained in the Treaty of Guadalupe Hidalgo dated February 2, 1848, and proclaimed July 4, 1848, (9 Stat. 922).

At the time of said treaty there existed in California some 500 separate autonomous groups of American Indians which were variously known as tribes, nations, bands, rancherias and villages. These groups had lived in more or less distinct Indian fashion for centuries prior to said cession.

After the cession of California to defendant, a great influx of white people entered California and occupied lands formerly possessed and used by the Indian groups, killing many of them and driving a great many more of them from their places of abode and scattering them throughout the state. So great was the disruption of community life by the whites that with few exceptions, later referred to, these California Indians never again lived

as separate bands, tribes or rancherias, and because of such destruction of communal existence and the policies of the United States thereafter pursued, the tribal or group origin of the Indians was in general lost, and the remnants of the disrupted groups and their descendants, collectively, were referred by the administrative officers of the Government, in Congressional Acts and the people of California generally by the appellation: "Indians of California." That said Indians constitute an identifiable group of American Indians under the provisions of Section 2 of the Indian Claims Commission Act and were authorized to present the instant claim through its members, as was done here.

While the appellation, "Indians of California," included all California Indians, certain groups thereof retained their tribal identities sufficiently to enable them to present and prosecute their separate claims for California lands and such groups are those which, by the order of October 6, 1958, were separated from the claimants in Dockets Nos. 31 and 37 and permitted to maintain their respective suits for Area A lands under their ancient tribal names independently of the claimants in Dockets Nos. 31 and 37. (Opinion of January 20, 1958, 6 Ind. Cls. Com. 86).

5. Lands Involved: In their amended petitions the Indians of California assert a claim for the value of all the lands within the boundaries of the present State of California.

After the filing of their amended petitions, the attorneys for the claimants entered into a stipulation, which was filed herein on June 29, 1955, with the attorneys for the Klamath and Modoc Tribes and Yahooskin Band of Snake Indians, who had filed a claim, Docket No. 100, which

included about 1,600,000 acres of lands in California, by which the Indians of California "disclaimed any right, title, interest or claim" in the California lands involved in the claim of the Klamath and Modoc Tribes and the Yahooskin Band as set forth in their petition in said Docket No. 100.

By the order of October 6, 1958, the lands in California were divided into two divisions which were designated in the order as Areas A and B.

Area A includes all lands in California for which compensation is claimed by Indian groups, other than the Indians of California (claimants in Dockets Nos. 31 and 37), which Indian groups are named and the dockets in which their respective claims are set forth are shown in said order, which is hereby referred to for greater certainty.

Area B lands are all the lands in California, except those contained in Area A, aforesaid. Because of the above, the lands involved in the claim of the Indians of California have been reduced to the Area B lands. And, as found (Finding No. 6) later, Area B lands have been reduced by the acreage of the confirmed Spanish and Mexican private land grants and confirmed grants to California Missions which may be located in said Area B.

Area B extended generally from southern California along the middle and western part of the state northerly to almost the north section thereof. During Spanish and Mexican sovereignty and long prior thereto the area was occupied and used by several hundred relatively small groups of Indians. These aboriginal groups used and occupied tracts with more or less definite

boundaries which were respected by other Indians and known by the whites as tribes, bands, rancherias and villages. These Indian groups or tribelets, as the witness, Dr. A. L. Kroeber, called them, developed their systems of culture and economy and subsisted largely upon the natural resources of the soil and waters of the area which they occupied, used and possessed as the sole and undisputed possessors.

#### SPANISH AND MEXICAN LAND GRANTS

6. During Spanish and Mexican sovereignty, many grants of large areas of land were made by those governments in the territory ceded by the treaty of Guadalupe Hidalgo (1848) of which several hundred grants were for lands within the present boundaries of California.

By Article VIII of the treaty of Guadalupe Hidalgo, the United States agreed that property of every kind belonging to Mexicans established within the territory ceded by said treaty and the property of every kind belonging to Mexicans not established in the ceded territory shall be retained by them and respected by the United States and by the 2d Article of the Protocol of May 26, 1848, which was interpretative of the treaty, the United States expressly recognized the land grants and agreed that the grantees thereof "may cause their legitimate [titles] to be acknowledged before the American tribunals." By the second paragraph of that article, the titles to the grants in California were those that were legitimate under Mexican law up to May 13, 1846.

In order to carry out the obligations thus assumed, the United States passed the Act of March 3, 1851 (9 Stat. 631), and thereby created a Board

of Land Commissioners to determine the title of the grantees of lands derived from the Spanish or Mexican government.

Pursuant to the 1851 Act, 553 Spanish and Mexican grants for lands in California aggregating 8,859,135.60 acres (Trans. pp. 1670, 1677) were validated and patents (Pet. Ex. 6) issued by the United States (see Pet. Ex. ALK 13 - parts 1 and 2, and Def. Ex. 160 - parts 1 and 2) to claimants of lands derived from the Spanish or Mexican governments prior to May 13, 1846. A check of the land grants listed in the petitioners' and defendant's exhibits, cited above, enabled us to identify 23 confirmed grants to California Missions of an aggregate acreage of 42,469.73, which were included in the 8,859,135.60 figure set forth above, so we conclude that the latter figure includes all lands in California granted for all purposes, including Mission lands, by both Spain and Mexico. That the title to such lands vested in the grantees as of the date of the respective grants, which were all made prior to May 13, 1846, and the title to none of the lands included in such confirmed grants passed to the United States under the treaty of Guadalupe Hidalgo, nor is the United States obligated to right the wrongs, if any there were, committed upon the Indians in making such grants.

That the Area B lands (Finding No. 5) shall not include any lands in said Area B which were granted by Spain or Mexico prior to May 13, 1846.

Section 15 of the Act of March 3, 1851, provided: ". . . any patent to be issued under this act, shall be conclusive between the United States and said claimants only, and shall not affect the interests of third persons."

PRESENTATION OF CLAIMS FOR  
LANDS SITUATE IN CALIFORNIA

7. After California was admitted to statehood on September 9, 1850, the Congress passed the Act of March 3, 1851, (9 Stat. 631), for the purpose of quieting the titles to lands derived from the Spanish and Mexican governments.

Section 8 of the latter Act required "every person claiming lands in California by virtue of any right or title derived from the Spanish or Mexican government" to present the same to the board of land commissioners created by the act for the determination of the validity of the right or title of the claimants under the treaty of Guadalupe Hidalgo, the law of nations, the laws, usages, and customs of the government from which the claim is derived, the principles of equity, and the decisions of the Supreme Court of the United States. (Sec. 11).

By the provisions of Section 13 of the Act of March 3, 1851, claims for the lands in California derived from either Spain or Mexico had to be presented to said board of commissioners within two years after the date of said act, and all lands, the claims to which were not so presented, became part of the public domain of the United States.

The claimants here, the Indians of California, never presented a claim for any of the lands, the value of which they now seek recovery. In Docket No. 31, the petitioners in their petition allege that they did not present their claims of ownership of their lands in California to the commission created by the Act of March 3, 1851.



INDIAN RESERVATION LANDS

8. After we acquired California in 1848, the United States set aside therein as reservations for Indian use 683,359 acres of land. Although a large part of this land is within Area B, the evidence does not show the acreage or location thereof in said Area B, but whatever further proof shows to be located in said area should not be included with the lands which we hold the petitioners are entitled to be compensated for.

UNCOMPENSATED TAKING OF INDIAN LANDS

The Act of March 3, 1851 (9 Stat. 631), contains the following provisions:

"That for the purpose of ascertaining and settling private land claims in the State of California, a commission . . . is hereby constituted . . ." (Sec. 1).

". . . and it shall be the duty of the commissioners . . . to decide the validity of said claim . . ." (Sec. 8).

"That all lands, the claims to which have been finally rejected by the commissioners in manner herein provided, or which shall be finally decided to be invalid by the District or Supreme Court, and all lands the claims to which shall not be presented to said commissioners within two years after the date of this Act, shall be deemed, held and considered as part of the public domain of the United States . . ." (Sec. 13).

The Commission finds that nothing in said Act required the Indian inhabitants of California to present their claims for their original Indian title to California lands; that no such claims were presented, or presented by the California Indians and rejected by the Commissioners or finally decided to be invalid by the District or Supreme Court of the United States.

The Commission therefore finds that the Indians held original Indian title to all the lands in Area B, except those Spanish or Mexican grants mentioned in Finding No. 6, and that such Indian title to said lands was extinguished by the United States by virtue of the provisions of Section 13 of the Act of March 3, 1851, and no compensation was paid said Indians for their original rights therein. As mentioned in Finding No. 8, the acreages of reservations found to be within Area B are to be excluded from the lands for which the Indians are to be compensated.

Edgar E. Witt  
Chief Commissioner

Louis J. O'Marr  
Associate Commissioner

Wm. M. Holt  
Associate Commissioner