

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. DORNBAUGH, 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

