

## Opinion of the Court.

allegation therein contained upon this subject is not very clear. It might possibly be regarded as sufficiently alleged in an argumentative kind of way, but it certainly is not as plainly alleged as it ought to be. The petition, however, can be easily amended on application to the court below before further proceedings are taken.

This, we think, completes the review of the material questions presented by the record. The first and important question in regard to whether the proposed use is public or not, having been determined in favor of the United States, we are not disposed to take any very technical view of the other questions which might be subject to amendment or to further proof upon the hearing below.

*The judgment of the Circuit Court in each case must be reversed, and the record remitted to that court with directions to grant a new trial in each.*

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SIoux CITY AND ST. PAUL RAILROAD COMPANY  
v. UNITED STATES.

## PETITION FOR REHEARING.

Received December 17, 1895. — Decided January 13, 1896.

The court adheres to its opinion and decision in this case, 159 U. S. 349, and corrects an error in statement in it, which does not, in any degree, affect the conclusions which were there reached.

THE case is stated in the opinion.

*Mr. J. H. Swan and Mr. George B. Young* for petitioners.

MR. JUSTICE HARLAN delivered the opinion of the court.

In the opinion of this court, 159 U. S. 349, 367, it was said:  
“Upon examination of the certified list of lands, *based on the*

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*diagram originally furnished by the railroad company to the Secretary of the Interior* and transmitted by the General Land Office to the local land office on the 26th of August, 1867, it is found that the actual area of the odd-numbered sections within the place limits of the Sioux City road, *excluding* odd-numbered sections within the conflicting place limits of the two roads, contained only 247,476.85 acres; and the actual area within the conflicting place limits of the two roads, *according to the same diagram*, was 70,705.29 acres." This was not strictly correct. The diagram referred to was prepared in the Department of the Interior, but it was based on the original survey made and furnished by the railroad company. Other sentences in the same connection are subject to the like criticism. But this inaccuracy of statement does not affect in any degree the grounds upon which the court reached the conclusion that the diagram of 1867 should not control, and that the measurement and diagram of 1887 should be taken as the basis for determining the area of the odd-numbered sections within place limits.

None of the other matters mentioned in the petition for a rehearing require special notice. The views therein presented were fully considered by the court before the original opinion was filed. The point now pressed by counsel as to errors in the matter of addition is immaterial, even if it be well taken; for whatever the excess in the quantity of land received by the railroad company, the result, in the present case, will be the same as stated in the opinion, namely, that the railroad company is not entitled to any of the lands *here in dispute*, whatever may be the aggregate quantity of acres.

The application for rehearing is

*Denied.*