CASE NO. 318 N. D.

CASE NO.
318
NORTHERN DISTRICT

SUSCOL GRANT

M. G. VALLEJOS AND ASSIGNS
CLAIMANT:

NOV 24 1962

LAND CASE 318 ND 323 pgs.

FEB 22 1963

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TRANSCRIPT

OF THE

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PAGE 1

PROCEEDINGS

IN CASE

NO. 291.

M. G. Vallejo & Assigns CLAIMANTS.

VS.

THE UNITED STATES, DEFENDANT,

FOR THE PLACE NAMED

"Boscol"

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Office of the Board of Commissioners,

To ascertain and settle the Private Land Claims

IN THE STATE OF CALIFORNIA.

Be it Remembered, that on this seventeenth day of July, Anno Domini One Thousand Eight Hundred and Fifty-two, before the Commissioners to ascertain and settle the Private Land Claims in the State of California, sitting as a Board in the City of San Francisco, in the State aforesaid, in the United States of America, the following Proceedings were had, to wit;

The Petition of M. G. Vallejo & Assigns, for the Place named "Soscol," was presented, and ordered to be filed and docketed with No. 291 and is as follows, to wit;

(Vide page 5 of this Transcript.)

Upon which Petition the following subsequent Proceedings were had in their chronological order, to wit;

San Francisco February 15th 1853.

In Case no. 291, M. G. Vallejo and Assigns for the place named Soscol, the depositions of Manuel Vaca, and Felipe Peña, witnesses in behalf of the Claimants, taken before Commissioner Harry I. Thornton, were filed;

(Vide pages 12 & 13 of this Transcript.)

San Francisco February 16th 1853.

In the same Case the deposition of Salvador Vallejo, a witness in behalf of the Claimant, taken before Commissioner Hiram Hall, was filed;

(Vide page 8 of this Transcript.)

San Francisco February 17th 1853.

In the same Case the deposition of Pablo de la Guerra, a witness in behalf of the Claimant, taken before Commissioner Harry I. Thornton, with Document

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marked N. D. S. no. 1, annexed thereto, was filed;
(vide page 15 of this Transcript.)

San Francisco February 15th 1855.

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In the same case the deposition of Isaac B. R. Cooper, a witness in behalf of the Claimant, taken before Commissioner Leland Hall, was filed;
(vide page 16 of this Transcript.)

San Francisco Sept. 28th 1853.

Case no. 291 was ordered to the foot of the Docket.

San Francisco November 16th 1853.

In the same case the deposition of James A. Hardpeth, a witness in behalf of the Claimant, taken before Commissioner Alpheus Felch, was filed;
(vide page 6 of this Transcript.)

San Francisco November 29th 1853.

In the same case the depositions of Salvador Vallejo and Cayetano Fares, witnesses in behalf of the Claimant, taken before Commissioner Alpheus Felch, were filed;
(vide pages 14 of this Transcript.)

San Francisco Sept. 26th 1854.

Case no. 291 was ordered to be placed at the foot of the 2d Class cases on the Trial Docket.

San Francisco October 26th 1854.

In the same case the depositions of J. D. Marks, ~~and Thomas Fallon~~, witness in behalf of the Claimant, taken before Commissioner Alpheus Felch, were filed;
(vide page 17 of this Transcript.)

San Francisco October 30th 1854.

In the same case the deposition of Hans Patton a witness in behalf of the United States, taken

before Commissioner Peter Sott, was filed;

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before Commissioner Peter Lott, was filed;
(vide page 21 of this Transcript.)

San Francisco November 7th 1854.

Case no. 291 was submitted on briefs and taken under advisement by the Board.

In the same case the United States Law Agent filed certified copies of the following papers, as evidence in behalf of the United States, viz:

1. Deposition of Salvador Vallejo;
(vide page 33 of this Transcript.)
2. Deposition of Jasper. O. Farnell;
(vide page 38 of this Transcript.)
3. Deposition of José de la Rosa;
(vide page 24 of this Transcript.)
4. Deposition of James McKinstry;
(vide page 26 of this Transcript.)
5. Deposition of Wm. B. R. Cooper;
(vide page 30 of this Transcript.)
6. Deposition of George C. Yount;
(vide page 31 of this Transcript.)
7. Affidavit of M. G. Vallejo;
(vide page 45 of this Transcript.)

all taken in Case no. 250, Mariano G. Vallejo for the place named "Petaluma."

San Francisco May 22nd 1855.

In the same case Commissioner S. B. Farnell delivered the Opinion of the Board confirming the claim;

(vide page 83 of this Transcript.)

and the following order was made, viz:

(vide page 86 of this Transcript.)

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Petition

To the Honorable Commissioners to Settle Private Land Claims in California

The Petition of Mariano Guadalupe Vallejo for himself and his assigns respectfully shows that in the early part of the year 1843 he applied to the Governor of California for the tract of land called Soscol in payment of monies due him from the Government of Mexico whereupon the said Governor Manuel Micheltorena granted to the Petitioner the aforesaid tract of land as a colonist with certain conditions subsequent which Grant was dated the 16th day of March A.D. 1843

That the Petitioner then purchased of the Departmental Government of California for the sum of five thousand dollars the aforesaid tract of land called Soscol receiving for it a deed in fee absolute dated the 19th day of June AD 1844. That on the 26th day of September AD 1845 the aforesaid Grant and sale were duly approved by the Departmental Assembly of California,

All of which is fully shown by the original papers copies of which are submitted herewith marked A with a translation marked B. and the Petitioner also submits herewith a map of said tract of Soscol and the boundaries as described in said title papers marked C. The Petitioner further shows that the said tract of land has not been surveyed by the Surveyor General of the United States but that its boundaries are fully described in the title papers and are well known

That he has been for some ten years and now is in the quiet peaceful and undisputed possession of said tract of land and with those holding under him has made improvements thereon to the amount of many millions of Dollars

That He knows of no conflicting claims

That he relies for confirmation of title upon the original papers copies of which are submitted herewith and upon such other and further proofs

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as he may be advised and in case anywherefore he prays the commissioners to confirm to him and to his assigns the said tract of land

By his Attorneys
Halleck Peachy & Billings

Filed in Office July 17th 1852
George Fisher
Secretary

Recorded Record of Petitions Vol 1 P. 185 + 186
George Fisher
Secretary

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Depo of J. M. Hudspeth

Office of the Board of Commissioners &c
this day before Commissioner Alpheus Felch came James M Hudspeth a witness in behalf of claimants M. G. Vallejo and assigns No 291 who after being duly sworn deposed as follows

Questions by Mr Peachy attorney for claimant

1 Question What are your name age and place of residence

answer My name is James M Hudspeth my age is forty years and I reside in Sonoma County California

2 Question How long have you known the Suscol Rancho

answer Since September 1844

3 Question In what county is it

answer Solano

4 Question Are you acquainted with the lands Tulucays and Suisun

answer I am

5 Question Do you know the boundaries of the Suscol Rancho claimed by M. G. Vallejo if you describe them as you have always understood them to be and as they are Generally known

answer I know the boundaries The Rancho is bounded on the west by Napa creek on the South by the Straits of Carquinez on the East by the Suisun Bay and the Suisun Creek for a part of its length and the foot hills forming the western side

of the Suisun Valley and on the south by a range of hills

The limits of Suisun say from the north west boundary and are separated from the Fossol Rancho by a branch of the Napa River called the Fossol Creek

This creek throughout its whole length forms a boundary of the Fossol Rancho, From the head of that creek in a southerly direction the boundary is a ridge which is the water shed divide between the waters of the Napa River and the Suisun Creek and Bay

This ridge extends upto some high Peaks there are three of them close together and are commonly known and noted land Marks having names which I do not now recollect

From these Peaks the boundary of the Fossol is along a ridge in a direct south east direction running down to the Suisun Creek

The Suisun lands from the boundary on the north and east part I made along of the Fossol Rancho in 1847 and run the lines as above described

I Sustain to this is the Yoba della Yegua commonly known as some Islands

answer It is at the mouth of Napa River at the entrance of the bay quite straits I suppose know Islands is about two or two and a half miles

James. M. Hudspeth

I sustain by Mr Grunbaum associate Law Agent

I Sustain From what you say and from your knowledge of the boundaries described by you

answer When I made the survey I was in the employment of Mr O Farrell and he furnished me with a description of the boundaries all my knowledge of the boundaries is derived from the

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description received from Mr O Farrell

Questions by Mr Peachy

1 Question Did you obtain your knowledge of the natural objects described by you from Mr O Farrells description of them or from your own knowledge of the country

Answer From my own knowledge I only learn from him the natural objects which I was to follow in the survey, the objects themselves I know of my own knowledge

Subscribed and sworn to before me this 12th day of November AD 1853

Alpheus Felch
Commissioner

Filed in Office November 14th 1853
Geo Fisher
Secretary

Recorded in Evidence B. Vol 3 Page 403
Geo Fisher
Secretary

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Depo of S. Vallejo

Office of the Board of United States Land Commissioners

San Francisco November 29th 1853

This day before Commissioner Alpheus Felch came Salvador Vallejo a witness on behalf of the claimants M. G. Vallejo and assigns Petition No 291 and being duly sworn his evidence being in Spanish was interpreted by the Secretary as follows

Questions by Mr Peachy attorney for Claimant

1 Question What are your name age and place of residence

Answer My name is Salvador Vallejo my age is forty two years and residence at Napa County California

2 Question Are you acquainted with the boundaries of the Soscol Rancho of [illegible]

Answer I am. It is bounded on the south side by the Rancho of Tulucay belonging to Cayetano Juarez from which

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It is divided by a creek called Sescol on the north side it is bounded by the upper road leading from the Rancho Tulucay to Suisun On the east it is bounded by the Rancho Suisun,

From which it is divided by a range of small hills, On the west it is bounded by the River Napa and on the South by the Straits of Carquinez, The Bay of Suisun forms a part of the boundary on the east

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3 Question Are these boundaries well known and for how long a time have you known the land called Sescol by such boundaries

Answer They are well known and I have known said Rancho with these boundaries ever since 1833

4 Question Please describe the route of the upper road leading from Tulucay to Suisun forming the boundary above mentioned

Answer The road runs over broken rocky land It is not a wagon road but such as is used for riding and for Pack mules, There are large bends in it but there are not many meanders

It runs on the North side of the peaks which are natural objects well known, The road is from two and a half to three leagues between the western limits of Tulucay and the place where it enters the Suisun including its meanderings

I suppose the distance is about two leagues in a direct line The road crosses the western line of the Rancho Tulucay at the Portezuelo which I think is nearer to the Southern boundary of Tulucay than to the northern,

It enters the Rancho of Suisun in the valley of Suisun This road forms the boundary line of Sescol from the boundary line of Tulucay to the boundary line of Suisun It runs North of the Green Valley or Cañada Verde

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5 Question would a line drawn from the head of the Soscol arroyo to the most prominent of the peaks of which you have spoken and thence to the most Southerly point of the Suisun hills be within the limits of the Soscol Rancho

answer It would I gave Juridical possession of Tulucay and given the boundary lines of that Rancho I also gave juridical possession of Suisun

6 Question Does the Estero of Suisun form a part of the Boundary of the Rancho Soscol

answer From the Embarcadero to Benicia the margin of the Estero and from the Bay of Suisun forms the boundary of Soscol on the eastern side

7 Question What is the boundary line between Soscol and Suisun from the Embarcadero of Suisun to the Southernmost point of the Suisun hills

answer It is a line which I have run from the small hill at the Embarcadero to the point of a hill across the Valley of Suisun

The Embarcadero is at a small hill which is divided from the other hills by a small valley

I run the line last mentioned when I gave the Juridical possession of Suisun

8 Question What is the western boundary between Soscol and Tulucay

answer It is the line from the head of the arroyo Soscol to the arroyo Sarco o Cerito Madera

Salvador Vallejo

Mr Grimshaw associate Law Agent was present at the taking of this deposition but propounded no question to the witness Subscribed and sworn to before me this 29 th day of November AD 1853 Alpheus Felch Commissioner

Filed in Office Nov 29 1853 Geo Fisher Secy
Recorded in Co B. Vol 3 P 462 Geo Fisher Secy

Recorded in Bk B. Vol 3 P 462 Geo Fisher Secy

11 Depo of C. Juarez

Office of the Board of United States Land Commissioners

San Francisco November 29. 1853

This day before Commissioner Alpheus Felch came Cayetano Juarez a witness in behalf of the Claimants M. G. Vallejo and assigns Petition 291 and being duly sworn deposed as follows his evidence being in Spanish was interpreted by the Secretary

Questions by Mr Peachy Atty for the Claimant

1 Question What is your name age and place of residence

Answer My name is Cayetano Juarez my age is forty three years and I reside at Napa in California

2 Question Are you acquainted with the Soscol Rancho claimed in this case if you state what do you know of the settlement and occupation of it by the claimant

Answer I know the Rancho and have known it during the last twenty years Ever since the year 1836 I have known it to be in the possession and occupation of M G Vallejo who has occupied it with cattle and horses

He has had ten or twelve thousand head of cattle and from eight hundred to a thousand horses He cultivated a considerable portion of it but I can not tell how much

He sowed forty or fifty quintals of grain there in the Rancho of Tul-ucay which adjoins the Rancho of Soscol where I have lived twenty years Tulucay was originally granted to me and I own it yet

3 Question Are you acquainted with the boundaries of the Soscol Rancho

Answer I am The arroyo Soscol divides my Rancho from Soscol Rancho the boundaries commence at the mouth of the arroyo Soscol and run up the arroyo to its head, thence by the hills to the Peakes thence

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by the boundary line to the Rancho of Suisun thence to the Embarcadero of Suisun at the Estero of Suisun thence all along the margin of said Estero and the Bay of Suisun by Benicia to the mouth of the arroyo Soscol.

From the Embarcadero to Benicia the line is all along the water and the water is the line also from Benicia to the mouth of the Soscol creek

Cayetano Juarez

Mr Greenhow associate Law agent was present at the taking of this deposition but propounded no interrogations to the witness

Subscribed and sworn to before me this 29th day of November 1853

Alpheus Felch
Commissioner

Filed in Office November 29th 1853
Geo Fisher
Secretary

Recorded in Evo B. Volume 3 Page 464
Geo Fisher
Secretary

Depo of J Felipe Peña

San Francisco Feby 15, 1853

On this day before Commissioner Harry I Thornton came Juan Felipe Peña a witness on the part of the claimants M. G. Vallejo and assigns Petition Number 291 and was duly sworn his evidence being interpreted by the Secretary

Questions by Claimants Counsel

1 Question What is your name age and place of residence

Answer My name is Juan Felipe Peña my age is now forty years I reside in the Laguna Rancho the other side of Suisun I have lived twelve years in California

2 Question Do you know the Rancho of Soscol and if so when and by whom was it occupied

Answer I have known this Rancho for about twelve years during the

Rancho for about twelve years during the

13 whole of which time it has been occupied by the Claimant Vallejo who had a house built upon it, cattle amounting to the number of four or five thousand, many horses and some cultivation

Question If you know the boundaries of this Rancho please state them

Answer I do know its boundaries They are the Estero of Nappa the rivulet near the house the Estero of the land of Suisun and the straits of Carquinez

Juan Felipe + Peña
United States Law Agent present

Sworn to and his mark made before me this 15th of February 1853
Harry I Thornton
Commissioner

Filed in Office February 15th 1853
Geo Fisher
Secretary

Recorded in Evidence B. Volume 2 P. 573
Geo Fisher
Secretary

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Depo of M. Vaca

San Francisco February 15th 1853
On this day before Commissioner Harry I. Thornton came Manuel Vaca a witness in behalf of the Claimants M. G. Vallejo and assigns Petition Number 291 and was duly sworn his evidence being interpreted by the Secretary

Questions by Claimants Counsel

1 Question What is your name age and place of residence

Answer My name is Manuel Vaca my age sixty seven years my residence is in Solano County

2 Question Do you know the Rancho of Soscol and if so when by whom and in what manner was it occupied

Answer I am acquainted with the Rancho in the year 1837 when I first knew it it was occupied by General M. G. Vallejo who had a house + on it, upwards of three thousand cattle and many horses some little

X a house

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cultivation was had upon it by the said Vallejo who has occupied it down to this time

Question Do you know the boundaries of this Rancho and if so relate them

Answer One of the boundaries is the town of Napa another a rivulet coming down from the mountains separating the said Rancho from the Rancho Tulucay another is a high ridge of hills separating this Rancho from Suisun and the fourth is the straits of Carquinez

Juan Manuel X Baca

U S Law Agent present

Sworn to and his mark made before me this 15th of February 1853

Harry I Thornton
Commissioner

Filed in Office February 15th 1853
Geo Fisher
Secretary

Recorded in Evidence B. Volume 2 P. 373
Geo Fisher
Secretary

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Depo of S. Vallejo

San Francisco Feb 16th 1853

On this day before Commissioner Hiland Hall came Salvador Vallejo a witness in behalf of the Claimant M. G. Vallejo and assignees and was duly sworn his evidence being interpreted by the Secretary

In answer to inquiries by counsel for the claimant the witness testified as follows

My name is Salvador Vallejo my age is thirty eight years and I reside in Sonoma

I know the Rancho called Soscol and have known it from the year 1833 It is situated in the county of Solano I have heard it called the Rancho Nacional but that was not the true name It has been occupied for the last twelve years by M. G. Vallejo with some sixteen thousand head of cattle

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three thousand breeding mares twelve three hundred tame horses and two thousand hogs He has had houses and corrals on the land and cultivated portions of it

When he first established the Rancho he put on it about three thousand five hundred head of cattle they were taken from Petaluma He still continues to occupy the land,

The land is bounded on one side by the River Napa and Estuary on another by the Bay of Suisun and Benicia on another by the road leading from the Rancho of Cayetano Juarez to Suisun and on another the arroyo desosado The Rancho of Cayetano Juarez is called Tulucay

Salvador Vallejo

Sworn and Subscribed Before me
Hiland Hall
Commissioner

Filed in Office Feby 16th 1853
Geo Fisher
Secretary

Recorded in Evidence B Volume 2 P 580
Geo Fisher
Secretary

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Depo of Pablo de la Guerra

San Francisco February 17th 1853

On this day before Commissioner Harry I Thornton came Pablo de la Guerra a witness in behalf of the Claimant M G Vallejo Petition No 291 and was duly sworn his evidence being given in English

The United States associate Law Agent was present

In answer to questions by Claimants the witness says

My name is Pablo de la Guerra my age is thirty three years I was born in California and reside in Santa Barbara

I am acquainted with the hand writing of Manuel Micheltorena and Francisco Arce having often seen them write their signatures

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to the Cupies before me marked Exhibit Number one and attached to this deposition and to the best of my knowledge and belief they are true copies

Pablo de la Guerra
U S Law Agent Present

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Sworn to and subscribed before me this 17th day of February 1853
Harry I Thornton
Commissioner

Filed in Office February 17th 1853
Geo Fisher
Deputy

Recorded in Book one B. Volume 2 P. 388
Geo Fisher
Deputy

Depo of John B.R. Cooper

San Francisco Feby 18th 1853

Out this day before Commissioner Leland Hall came John B R Cooper a witness in behalf of the Claimant M.G. Vallejo and assigns Petition Number 291 and was duly sworn his evidence being given in English

The United States associate Law Agent was present

In answer to inquiries by counsel for the Claimant the witness testifies as follows

My name is John B R Cooper my age is sixty two years and I reside at Monterey I have lived in California about thirty years.

From the year 1839 to 1844 I had charge of a schooner belonging to the Department of the California and Alaska the California Schooner was employed in the service of the Government in carrying mails and supplies and troops between Monterey and Mazatlan and the coast of Mexico

I took some supplies in the schooner from Petaluma creek to San Pedro for Governor Micheltorena and by his direction about the year 1842 or 1843 The supplies consisted of wheat corn barley beans and peas some blankets canvas

beans and peas [illegible] blankets [illegible]

17 leather shoes and deer skins I cannot tell the value of the articles. the vessel carried about eighty five Tons and was loaded full Mr G Vallejo furnished the supplies with which the vessel was loaded

I saw Micheltorena at Los Angeles before I went after the supplies and he told me General Vallejo had offered twenty thousand dollars for the tract of land called Soscol and he sent me after the supplies which I understood furnished were to go in payment for that land The supplies were furnished before Micheltorena came up to Monterey and the same summer he came there

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In answer to Inquiries by the associate Law agent the witness testified as follows The tract called Soscol was occupied previous to 1843 first by the Mission of San Francisco Solano and afterwards by the Government troops and was called the national farm

John B. R. Cooper

Sworn and subscribed before me

Hiland Hall
Commissioner

Filed in Office February 18th 1853

Geo Fisher
Secretary

Recorded in Evidence B. Vol 2 P 594

Geo Fisher
Secretary

Depo of J. D. Marks

United States Land Commission

San Francisco Octo 26th 1854

On this day before Commissioner Alpheus Felch came J. D. Marks a witness on behalf of the Claimants M. G. Vallejo and assigns Case No 291 who after being duly sworn deposed as follows

Questions by Mr Peachy attorney for Claimants

Question Please state your name age and place of residence

Answer My name is J. D. Marks my age is thirty seven years and I reside at present at San Francisco

2 Question Did you ever reside in the City of Mexico if yea when and in what business was you engaged

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Answer I resided in the City of Mexico in the year 1850 1851 and until October in the year 1852 I was an attache of the legation of the United States at the time that the Honorable Robert P. Letcher was Minister from the United States to the Mexican Government

3 Question Was you acquainted with Manuel Micheltorena formerly Governor of California if yea state how long you knew him during what time and what degree of intimacy was there between you

Answer I was acquainted with & first became acquainted with him while he was a colonel in the Mexican Army and was stationed at Matamoras on the Rio Grande I think it was in the year 1832 I knew him from that time until his death I was on intimate terms with him our intimacy was of a social character only

4 Question Please state whether you ever had any conversation with said Micheltorena relative to his Government of California and as to the extraordinary powers possessed by him

Answer I had frequent conversations with him on this subject in June July August and September 1852 at the City of Mexico He was a frequent visitor at the United States Legation

5 Question State what you know in relation to his official acts while Governor of California under his said extraordinary powers having been approved was approved by the General Government

Answer In frequent conversations he stated that all his official acts while Governor of California had been approved

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of by his Government He always enjoyed the confidence of his Government as far as I know after he left California,

I think he was then appointed adjutant General of the Mexican Army and after the treaty of Guadalupe Hidalgo he was appointed Governor and Commandant General of Yucatan where he was sent to quell a disturbance and after that he was appointed one of the Supreme Court of war which is a high Office I understood he was afterwards appointed Governor and commandant General of the State of Queretaro in which capacity he was acting at the time of his death

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6 Question Please state whether in these conversations he said anything about his making grants of land in California

answer He did He stated that he had given a great many Grants of land He mentioned the number but I do not recollect the number.

He said he very rarely refused them to any body and that he had given a great many to soldiers and others and that he had no doubt he had given a good many

That had never been presented to the land commission He said that at that time the lands of California were considered of very little value

7 Question Did you ever hear from any person besides himself that Micheltorena's acts while Governor of California had been approved by the Mexican Government

answer On one occasion I was requested to present a land title granted by Micheltorena to Jose Fernando Ramirez Secretary of State of Mexico at that time for his opinion thereon

I presented it to him and he replied that it was a good legal title and would have been binding in Mexico as Micheltorena had full powers delegated to him by Santa Anna under the Bases of Tacubaya to grant lands in California This interview with Ramirez

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was in July or August 1852

8 Question From your conversations with Micheltorena did you infer that his said acts had been approved by any express act of Mexican Legislation confirming them or by the tacit acquiescence of the Government

Answer I should infer that it was by tacit acquiescence of the Executive I am not aware that the Congress of Mexico ever acted on the subject nor do I believe they were ever referred to Congress or that it was ever deemed necessary to refer them to that Body

Questions by Mr Blanding associate Law Agent

1 Question In your conversations with Micheltorena and other persons did you learn that this approval was general or special and was such approval expressed or merely implied

Answer It was general Micheltorena merely stated that they had been approved but did not say how

2 Question In your conversation with Micheltorena as to his making many Grants in California did the conversation refer to Grants made under his extraordinary powers or the usual ordinary powers of Governor

Answer He stated that he made many Grants under the extraordinary powers with which he was invested He did not specify what they were or their particular character I think he mentioned that he had been very liberal to General Sutter

3 Question Do you know whether tacit approval was sufficient to ratify the exercise of Extraordinary powers

Answer It is my opinion that it was sufficient I have heard nothing to the contrary

4 Question Do you know whether an express disapproval was necessary

Answer I have known the Mexican Government to disapprove many acts of their officers

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J. D. Marks

Subscribed and sworn to before me this 26th day of October 1854

Alpheus Felch
Commissioner

Filed in Office October 26th 1854
George Fisher
Secretary

Recorded in Book B. Vol 5 Page 528
George Fisher
Secretary

Depo of H. Patten

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United States of America }
State of California ss }

San Francisco October 25. 1854

This day came before the Lott aforesaid Commissioners for taking testimony to be used before the Board of Land States Land Commissioners in said state Hans Patten a witness on behalf of the United States in case Number 291 on the Docket of said Board claim in S. Valley and assigns claimants and said witness being duly sworn deposeth as follows

The Counsel for claimants Mr Reading is present

Question by United States Law Agent

1 Question What is your name age and residence

Answer My name is Hans Patten my age sixty years my residence Solano County California

2 Question Look at the Diagram or Plat of the Rancho described in the paper now shown to you marked A. P. L. & subscribed in this deposition being the deposition of James M Hudspeth and state how much land said Rancho purports according to that description and your means of knowledge

Answer According to this description of boundaries said Rancho will contain an amount of land equal to 17 or 18 square leagues my means of knowledge are derived from having resided two years

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lines which have been surveyed by the United States Survey or General and also by having surveyed the General boundary of Napa and Sonoma Creeks and the shores of the straits of Carquinez and of the Bay of Suisun.

I have been engaged in making a county map of Solano County and found it necessary to make these surveys in order to make a correct map

Cross & summed by the Plaintiff's Counsel for Claimant

Question 1 Do you know where the Sonoma Creek is

answer I do. It is a small Creek which heads upon the Solano Mountains and runs in a westerly or rather southwesterly direction into Napa Creek, the distance from the head to the mouth is upwards of ten miles

Question 2 What is the course from the mouth of the Sonoma Creek to the mouth of Napa Creek

answer It is about twelve miles from the mouth of Napa Creek the general direction that Creek empties into the straits of Carquinez

Question 3 What is the distance from the head of the Sonoma Creek to the three Peaks

answer It is between two and three miles

Question 4 What is the course in a South easterly direction from the three Peaks to Suisun Creek

answer About a South east from the Peaks to said Creek would be three miles long

Question 5 What is the general direction of Sonoma Creek from its mouth to its head

answer The Creek from its mouth to its head lies in a North easterly direction

Question 6 What is the direction from the head of Sonoma Creek to the three Peaks

answer It is a little East of North

of Sonoma

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Question How far is it from the point where above drawn south east from the three Peaks, north & the Sonsum creek to the mouth of that creek

answer In a direct line it is about four and a half miles to what we call the mouth while is where said creek empties into the Tules about one and a half mile above the town of Sonoma

Question From the mouth of Sonsum creek measuring around the edge of the dry land on the borders of the tule how far is it round to the mouth of Napa creek

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answer It would be from 23 to 25 miles following the curves of the dry land) is situating the smaller curves or sinuosities. Indeed runs round a promontary about ten miles wide leaving out the Tule

and

about 18 miles long from Sonsum to the Solanas Peaks. The greatest length of the Rancho is about 18 miles and its greatest width about 10 miles leaving out the Tule lands

Question Independent of the Tules what quantity of land do you say this Rancho will contain

answer It cannot be less than fifteen leagues

Question In this estimate do you include all the lands in the following boundaries,

Beginning at the mouth of Napa creek running up the Napa creek on the Sosol line to the mouth of Sosol creek thence on the Sosol side of the Sosol creek to its head thence in a straight line to the three Peaks thence South East to Sonsum creek

Thence
along the Sosol lines of that creek to the mouth of that creek as before mentioned by you thence round the line to the mouth of Napa creek

answer I do estimate a tract of land according to these boundaries I am to apply my estimate of 15 leagues to include the Tules

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and of fifteen leagues to exclude them

11 Question Are you so well acquainted with all the natural objects first mentioned as to be certain that you know the objects alluded to

answer I think there is no possibility of my being mistaken in them I know them all well

12 Question Do you know whether or not any part of Suisun Rancho lies within those limits

answer I have examined the map of the Suisun Rancho as recorded in the recorders office at Benicia and I have also examined the evidence taken before this Board by the person who gave the juridical possession of said Suisun rancho and from these I think about two leagues of that Rancho North of fall within these limits

H Patton

Subscribed and sworn to before me on this 25th day of October AD 1854

Peter Lott
Commissioner &c

Filed in Office October 30th 1854

Geo Fisher
Secretary

Recorded in Evidence B. Vol 5, P 347

Geo Fisher
Secretary

Certified Copy Depo of J. de la Rosa

Office of the Board of land Commissioners for California San Francisco June 2, 1852

On this day before Harry I Thornton one of the commissioners for ascertaining and settling Private Land Claims in California came Jose de la Rosa,

A witness in behalf of the Claimant Mr. G. Vallejo being No 251 on the Docket of said Commissioners and was duly sworn his evidence being given in the Spanish Language and interpreted by George Fisher Secretary,

The United States Law Agent present

Question What is your name age and residence

the United States Land Agent Answers

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Questions by Claimant

1 Question What is your name age and residence

answer My name is Jose de Jesus Vejar I am forty one years I reside in Sonoma and have resided there twenty one years

2 Question Do you know the Rancho called Petaluma claimed by Mr G. Vallejo if so say what you know about its occupation by the Claimant

answer I do know the Rancho of Petaluma it is situated between Sonoma and Petaluma creeks Gen Vallejo first occupied it in 1833 or 1834 he built a house on it in 1833 or 1834

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He built a number large houses in 1839 he has cattle on it since 1834 sometimes as many as three thousand he still occupies it he has expended large sums of money on it in building houses making fences and cultivating the land

3 Question Do you know and the signatures of Jose Figueroa Juan B. Alvarado Manuel Jimeltorena Francisco Arce Pio Pico Jose de Jesus Navarrete and Manuel Jimeno if so say whether the signatures to the papers before you marked R are genuine

answer I am acquainted with the signatures of Jose Figueroa Juan B. Alvarado Manuel Jimeltorena Manuel Jimeno Francisco Arce Pio Pico and Jose de Jesus Navarrete having often seen them write their signatures to the papers before me marked R are genuine

Questions by the Land Agent

1 Question Is the whole or any part of the Rancho called Petaluma within the limits of the Sea coast or any Bay of the Ocean and if so what part

answer It is not

2 Question Was the land of the

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Rancho occupied by or within the limits of any mission on November 21st 1828

Answer It was not

32 Question To what extent has the land on this Rancho been cultivated

Answer I do not know to what extent the land was cultivated but I know there was at times as much as seven thousand bushels of wheat and about from two to three thousand bushels of Barley beans and other vegetables a large quantity and also corn

The Law agent is present

Jose de la Rosa

Sworn to and subscribed before me this 2nd of June 1852

Harry I Thornton
Commissioner

I hereby certify the foregoing to be a true and correct copy of the original Deposition in case No 250 M G Vallejo vs The United States for Petaluma now on file in this Office

In testimony whereof I have hereunto signed my name officially San Francisco California November 7th 1854
George Fisher
Secretary

Filed in Office November 9th 1854
George Fisher
Secretary

Recorded in Book of Evidence Vol 1 P. 341
George Fisher
Secretary

Certified Copy Depo of J. M. Hudspeth

Office of the Board of Commissioners &c &c
This day before Commissioner Alpheus Felch came James M Hudspeth a witness in behalf of claimant M. G. Vallejo Number 250 who after being duly sworn deposed as follows

Questions by Mr Peachy attorney for the claimants

1 Question What is your name age and place of residence

27

Answer My name is James M. Hudspeth my age is forty years and I reside in Sonoma County in California I have lived in California since the fall of 1843

2 Question Are you acquainted with the Rancho of Petaluma in Sonoma County if so how long have you known it

Answer I am I have known it since the fall of 1844

3 Question What was the condition of the Rancho at that time in regard to improvements and occupancy

Answer There was a large adobe house on it, a field was ditched in and there was a large number of cattle and horses on it, The place was occupied at that time by General M. G. Vallejo who spent a part of his time there and a part at Sonoma

I have seen him at both places I made a survey of the Rancho in the spring of 1847 I think it was in the month of June

4 Question What did you have to guide you in making this survey

Answer I had a diseño or plan Mr O'Farrell did the platting of the survey and had the title papers He gave me only the plan to survey by I did the work under Mr O'Farrell who employed me

5 Question Do you remember enough about the plan to be able to state whether it was an authentic document connected with the title

Answer I do not

6 Question What became of that document

Answer I cannot say I delivered it up to Mr O'Farrell

7 Question State what were the boundaries of the Rancho of Petaluma as shown by this Plan or diseño,

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Answer It was bounded on the
West and South by the Petaluma creek on
the East by the Rio Sonoma and on
the North and West by the hills called
Roblar de la Miseria These hills are very
low and covered with oak timber

Question Describe the line
as run by you in making the survey on the
North and Northwest portion of the Boundary
after leaving the bottom of Petaluma

Answer The line run by me
ran across a plain after leaving said bottom
for about one mile in a direction due West
of North according to my best recollection

It
covered about eight hundred Yards
above the upper bend of said creek and near the
place where two flat bottoms come together
and after running about a mile across the
plain where said is no timber,

It then ran
through timbered land about one mile and
then passing over some small hills it came to
the foot of the hills that divide the waters
of the Sonoma River from those of the Petaluma
creek,

These hills run nearly North and South
through the whole extent of the Petaluma Rancho
The line aforesaid is mostly a straight
line,

From the point last mentioned I ran
to the top of said dividing hills crossing
some streams and surveying my course
as the South and found the top of said hills
I ran down to Sonoma River having a branch
of that river on my right

I struck that
river at a point opposite the upper boundaries
Rancho and about two miles or less and about
below the Gentiles Plains

Question Did you have
any difficulty in locating the lines from
the plat which you had in your possession

Answer I did not

Question What part of your boundary

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run along the hills of Roblar de la Miseria

answer They form the north and west boundary these hills are a spur from the main dividing ridge or hills of which I have before spoken and run off at nearly right angles to them and extend out nearly to Las Pozas de Cantua

11 Question look on the map now presented to you and marked Exhibit H3 with the initials A. F. annexed to the Deposition of Salvador Vallejo this day taken in this case and state what you know of it

answer I recognize this map as a tracing copy of the map of the survey above mentioned made by me

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12 Question Describe the position of Las Pozas de Cantua on the map

answer The tide water flows at the Petaluma River about a mile above the place where the road from San Rafael to Sonoma as laid down on the map crosses it

Las Pozas de Cantua are situated near the extreme western corner of the Rancho and about two and a half miles from the place where said road crosses said river

James M Hudspeth

Mr Greenhow associate law agent was present at the taking of this deposition but propounded no interrogatories to the witness

Subscribed and sworn to before me this 9th day of November 1853

Alpheus Felch
Commissioner

I hereby certify the foregoing to be a true and correct copy of the original Deposition in Case Number 250 M. G. Vallejo vs The United States for the place named Petaluma now on file in this Office

In testimony whereof I have hereunto subscribed my name officially San Francisco Califor[nia] this November 7th 1854

George Fisher
Secretary

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Filed in Office November 9th 1854
George Fisher
Secretary

Recorded in Book 3 Vol 3 Page 384
George Fisher
Secretary

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Certified
Copy
Depo of
J.B.R.
Cooper

Office of the Board of Commissioners &c
This day before Commissioner Alpheus Felch
came John B.R. Cooper a witness on behalf
of Claimant M.G. Vallejo Number 250
who after being duly sworn upon oath
Questions by Wm Peachy
attorney for Claimant
1 Question What are your
name age and place of residence
Answer My name is John
B.R. Cooper my age is sixty years and I
reside at Monterey in California
2 Question Are you known
or have you known the Rancho of Petaluma
Answer I am
3 Question Please state what
you know about the occupation cultivation
and improvements made on said land
by Genl M.G. Vallejo
Answer I was there on
his farm in 1834 and I then was there about
one year and could discover cattle and
horses. I remained at that time about three
months,
And was in the neighbourhood
about three years going back and forwards
frequently by this place General M.G. Vallejo
occupied the Rancho during all that time
His
family lived on the place and I was there
a part of the time and a part of the time
I was at Sonoma but this residence
was in the Rancho Petaluma his family
intirely
There were at that time five men
and cattle principally breeding cattle on
the land on the place this was in 1834
The stock on the place continued afterwards

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to increase and other cattle were put on the Rancho, has always been considered General Vallejo's farm and he has always had it occupied since the time above mentioned

John B R Cooper

Mr Greenhow associate Law Agent was present at the taking of this deposition but propounded no questions to the witness

Subscribed and sworn to before me this ninth day of November 1853

Alpheus Felch
Commissioner

I hereby certify the above to be a true and correct copy of its original in case Number 250 now on file in this office

In testimony whereof I have hereunto signed my name at the City of San Francisco California this 7th November AD 1854

Geo Fisher
Secretary

Filed in office November 9th 1854

George Fisher
Secretary

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Certified Copy Depo of Geo C Yount

Office of the Board of Commissioners of California Land Claims

San Francisco May 31st 1852

On this day before me Harry I Thornton one of the Commissioners for ascertaining and settling Private Land Claims in the State of California came George C Yount a witness produced in behalf of the claimant M G Vallejo whose Petition is number 250 on the Docket of the Board and was duly sworn

The Law Agent was notified and did attend

Questions by Claimant

Question 1st What is your name age and place of residence

Answer My name is George C Yount age fifty eight (58) years residence in Napa County State of California,

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have resided in that vicinity since 1834

Question 2 Do you know the Rancho called Petaluma claimed by M. G. Vallejo and if so say where it is situated how long it has been occupied and by whom

Answer I do know the above Rancho it is situated between Petaluma creek and Sonoma creek on the north side of San Pablo Bay

In 1834 this land was occupied by the claimant M. G. Vallejo he built a house on it in the same year and he has continued to occupy the land ever since,

He has cultivated portions of the land as much as two hundred acres some years some years less he has also occupied it with cattle and horses sometimes as many as two thousand head

He has also spent large sums of money in improvements on the land probably as much as eighty thousand dollars I have myself worked on the houses upon the land at various times since 1834

Questions by Law Agent

Question Is this land within ten leagues of the sea coast

Answer I should think that at the nearest point it is about thirty miles from the sea coast I don't know exactly how many leagues there are in the tract

George C Yount

The United States Law Agent present

Sworn and subscribed before me this 31st of May 1852

Harry I Thornton
Commissioner

I hereby certify the foregoing to be a true and correct copy of the original Deposition in case Number 250 M G Vallejo vs The United States for the place named Petaluma now on file in this office

In testimony whereof I have hereunto subscribed my name officially San Francisco November 9th 1854

George Fisher
Secretary

Filed in Office November 9th 1854
George Fisher
Secretary

Recorded in Record of Evidence Vol 1 Page 125
George Fisher
Secretary

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Certified Copy Depo of S. Vallejo

Office of the Board of Commissioners &c &c
This day before Commissioner Alpheus Felch came Salvador Vallejo a witness in behalf of claimant M G Vallejo Number 250 who after being duly sworn deposes as follows

The witness spoke the Spanish language and the Secretary to the Board acted as interpreter

Questions by Mr Peachy attorney for the claimant

1 Question What are your name age and place of residence

Answer My name is Salvador Vallejo I am forty years of age and reside in Napa County California

2 Question Are you acquainted with the Rancho of Petaluma and if so how long have you known it

Answer I am and have been acquainted with it since 1833

3 Question Do you know at what time General M G Vallejo took possession of it

Answer I do It was in 1833 or 1834

4 Question What improvements were made by said Vallejo on the premises and what stock has he had on it since he first took possession

Answer He has built a small adobe house on it corrals and fences he has had from three to four thousand head of cattle on it and four hundred horses,

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about three of four hundred acres of the land are under cultivation He built the first house in 1833 This was an adobe house

General M. G. Vallejo did not live there at that time but I lived there and he came there from time to time and spent a part of his time there

5 Question What office did General Vallejo hold at that time under the Mexican Government

Answer He was the Military Commandant of San Francisco and had command of the whole Northern Frontier of California

6 Question What was known as the Northern frontier of California

Answer All the Territory north of the Bay of San Francisco including Sonoma Napa Solano Yolo and Shasta Counties

7 Question Was the place known as the Rancho of Petaluma within this Northern frontier

Answer It was

8 Question Where were the head Quarters of said Commandant in 1833 and 1834

Answer In San Francisco They were transferred to Sonoma subsequently to 1834 but I do not recollect at what time known the present town of Sonoma

9 Question How far is the Rancho of Petaluma from the Town of Sonoma where the head Quarters were

ND

Answer The nearest point of the land of said Rancho is one and a half mile from said town

10 Question How far was the house on said Rancho from said Town of Sonoma

Answer About three leagues Spanish measure

11 Question How long did Gen Vallejo remain in office as Military Commandant

in office as Military Commandant

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Answer From 1834 until the invasion of the country by the United States

12 Question Were the head Quarters ever changed from Sonoma after they were first established there

Answer They were not

13 Question When did General Vallejo build his large house on the Rancho of Petaluma

Answer He was building it some four years it is not finished yet it has remained about nine years in its present condition I cannot recollect when it was began

14 Question Did not General Vallejo occupy the house

Answer He did

15 Question How long did General Vallejo occupy the premises from the time he first took possession of it

Answer He has occupied it from that time to the present day

16 Question Can you state how much the large house built by General Vallejo cost

Answer I cannot make an estimate of it I suppose about eighty thousand dollars

17 Question What was the largest amount of stock on the Rancho at any one time since he took possession

Answer There was about ten thousand head of cattle about three thousand head of horses about three thousand sheep and a small flock of hogs at one time, the largest amount of stock there was about the time the American revolution took place in 1846

18 Question Please describe the boundaries of Petaluma as it has been claimed by General Vallejo

Answer The boundaries as known to us are the River Sonoma the (estero) estuary of Petaluma the hills

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known by the name of Robbardella
Reserve which adjoin the Rancho of the
same and the land of Miguel Alvarado I
do not recollect the name of Alvarados Ran-
cho but I think it is Gabilan & Salinas the
Estuary of Petaluma runs about any
about four leagues cumming at the
mouth of the Estuary

17 Question How does the
Sonoma River form a boundary

Answer That river emp-
ties into the Bay of Sonoma runs North
and running up about seven leagues
it runs about any of said Rancho The
Bay of Sonoma is the boundary of the Rancho
below the mouth of the Sonoma River
and the Estuary

18 Question How far is it
between the mouth of the Estuary and the
mouth of said River

Answer It is about two
three miles in a direct line on dry land
there is a marsh between the two along
the shore

19 Question Do you know
the Rancho called Agua Caliente near
Sonoma

Answer I do

20 Question What is the
western boundary of that Rancho

Answer The Sonoma
23 Question How far does the
Agua Caliente Rancho bound on said
River

Answer up to the creek
called Lecalabaza

24 Question What is the
name of the Rancho on the opposite side
of the Calabaza Creek

Answer Gallinas

25 Question Do you know the
situation of Las Pozas de Leantua

Answer I do They are in the
county of Sonoma They are at the foot of
the hills called Robbardella Reserve

of which I have spoken. The distance from the Town of Petaluma to the Pozas is about two miles

26 Question are the hills of the Roblar de la Miseria well defined and how are they situated

answer They are well defined They come down to the Estuary of Petaluma they form the boundary of the Petaluma Rancho on the west about four miles more or less

27 Question are Las Pozas de Cantara well known

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answer They are They are water holes or pools of water caused by the currants from the mountains in the rainy season and they have become prominent They communicate with each other in the rainy seasons They are water holes in gulches or ravines

28 Question where do the waters which flow down the ravine when the Pozas are empty

answer Into the Estuary of Petaluma

29 Question What is the Estero Alompalino

answer It is a part of the Estuary of Petaluma so called by the Indians on the side which they occupied The present City of Petaluma is on that side of the Estuary which is the west side

30 Question Did you ever see the original Diseño of the Petaluma Rancho which accompanies the Petition or title papers

answer I saw it some twelve years ago

31 Question Look on the map or diseño now presented to you marked Exhibit number 1 with the Initials A. F. hereto attached and state if from your recollection you recognize it as a copy of the diseño which you then saw

answer It is very similar

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to the one I then saw There is only the differ
ence There was a line drawn on that desert
through the Valley of Sonoma on the east
side of the Sonoma River I do not find any
other difference between them

Salvador Vallejo

Mr Brannon associate Law
Agent was present at the taking of this Depo
sition but propounded no questions to the
witness

Subscribed and Sworn to before me
this tenth day of November 1853

Aylmer Fitch
Commissioner

I hereby certify the foregoing to be a true and
correct copy of the original Deposition in
case Number 253 Mariano G. Vallejo et al Uni
ted States for the Defendants Petitioners
now on file in this office

In testimony whereof I have
hereunto signed my name
officially San Francisco
California November 6th
A.D. 1854 George Fisher
Secretary

Filed in Office November 9th 1854
George Fisher
Secretary

Recorded in Evidence B. Vol 3 P. 380
George Fisher
Secretary

Certified
Copy
Depo of
J. O. Farrell

United States of America }
State of California ss }
San Francisco March 29. 1854

This day personally came before Peter Lott
a Commissioner for taking testimony to be used
before the Board of United States Land
Commissioners in said State Jasper O Farrell
appears on behalf of the Defendant in
case Number 253 on the Docket of said Board
in which Mariano G. Vallejo is the Defendant
and the said Jasper O Farrell being duly
sworn in such cases in English as follows
to wit

to wit

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The United States Law Agent is present

Questions by Mr Pauley attorney for Claimant

Question 1 What is your name age and present residence

answer My name is Jasper O'Farrell my age eighty six years my residence Sonoma County California

2 Question How long have you resided in California

answer upwards of ten years

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3 Question Did you ever make a survey of the Rancho Petaluma if you know did you make it and what documents relative to the title of said Rancho had you in your possession when you made such survey

answer I had it surveyed by me Deputy Surveyor with about May or June 1847 I took a copy of the original title papers and by Samuel Purdy also a copy of a diseño attached to that title which documents I gave to Mr Hospith as a part of his instructions to execute the survey.

The diseño which I gave to Mr Hospith was a tracing copy which I made myself from the original which was with the original title papers and which I think I returned to Samuel Purdy with those papers I am not certain that I returned it

4 Question Have you that original diseño in your possession or do you know where it is

answer I have not nor do I know where it is

5 Question Was that diseño itself an original or a copy and was it in any manner authenticated

answer The diseño which I copied was with the title papers and if they were original it was I was unaware the I have as they were

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6 Question Do you recollect the contents of that deed as far as regards the boundaries of the land and the natural objects on it if you state them

Answer I recollect a portion of the contents but am I recollect distinctly the lines of the boundaries of the Grant the East the South and the West and South West,

The Estero of Sonoma was the Eastern boundary the overflowed lands of the Bay of San Francisco bounds the South and on the West was the Estero of Olompali now called the Estero of Petaluma,

And the Loma Partly on the North west on the South East the Sonoma Creek continues to be the boundary where the land joins the place upon [illegible] the survey was made in exact accordance with the deed

7 Question Look at the papers copy handed you marked Exhibit No 1 & annexed to the deposition of Salvador Vallejo in Number 9 the 1853 and state what you know about it

Answer It appears to be a copy of the Survey made by Lieut Beechey on a reduced Scale about one eighth of the size of that which I made from his field notes that map was furnished to him as I am informed as this appears to be a correct representation of the same Survey

8 Question From the papers in which you saw with the title papers could you or your deputy locate the lands attempted to be described by that deed

Answer As well as I can recollect the title papers as well as the deed mentions the boundaries and I can positively that the map and Survey which I made was made in exact accordance with the deed and title papers and deed and as well as I can recollect I had no difficulty in finding the boundaries

in finding the boundaries

9th Question What is your profession How long have you followed it and have you had much practice in it

Answer I am a civil Engineer by profession I have followed about 20 years I have practiced it about five years in California I have located a good many boundaries from original titles

10 Question What official position have you held in this country under the Mexican and American Governments

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Answer When I had the survey spoken of made I held the appointment of Surveyor of the Northern District of California under General Mason the Military Governor of the country

I had an appointment before that from Governor Kearny as Surveyor of the Department

The United States Law Agent objects generally to all the foregoing examination as irrelevant and incompetent as the survey mentioned was made without any lawful authority

Cross Examined by United States Law Agent

Question What are your duties as Surveyor under the appointment of Governor Mason

Answer My duty was to make correct surveys for such parties as applied to me for that purpose I had no public duties to perform

2 Question How long have you been personally acquainted with the Rancho of Petaluma

Answer I passed over the Rancho about December 1843 or January 1844 that was my first acquaintance with it from actual observation

I have known General Vallejo since that time, since that time he has generally lived in Sonoma I have seen him living at Petaluma I have seen his family residing generally at Sonoma

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Have seen his family also in Petaluma tho I do not think they ever made their residence there, I am not sufficiently well acquainted with them to swear positively that they never lived during that period out of Sonoma

3 Question Is the residence of General Vallejo in Sonoma within the boundaries of the Rancho of Petaluma

Answer No

4 Question Where are the field notes made for you by Mr Hudspeth

Answer I think I have got them in my possession

5 Question Look at the document filed in this case marked Exhibit annexed to the deposition of Jose de la Rosa taken before Commissioner Hary I. Thornton June 2nd 1852 R. and say whether they contain the description by which you directed Hudspeth to make the survey

Answer I think these are the title papers given to me by General Vallejo from which to make the survey they do contain the description of the land which together with the diseño formed my instructions to Hudspeth,

The particular words are in the 6th Page of said document beginning at the 9th line from the top of the Page and reading as follows " que á mas de los diez Sitios de ganado mayor que tiene Concedidos en el parage de Petaluma, marcados y reconocidos desde el rio de Sonoma, hasta el Estero de Olompali y Pozas de Cantua, resulta un Sobrante de tierra incluido en el diseño original," and also in the 8th page of said document and are rendered in English as follows,

Bounded on the South by the Estero of Olompali North and East by the river of Sonoma Agua Caliente and Guilicos and west by the hills of the Roblar de la Miseria

6 Question Did the diseño which you mention comprehend a larger territory than the survey you made

Answer I don't recollect

7 Question Do the marks you find on this Exhibit Number 1 correspond exactly with the ones you received from Grande Valley

Answer I can't remember this it appears to be a correct representation of the same tract of land as shown by the map which I handed the Surveyor

I think the north line in the original was a straight line in this it is not and in that according to the best of my recollection they do not correspond

8 Question In making the Survey according to your field notes what was the starting point

Answer It is so long since I have seen them I cannot say positively but I think it was where the road to San Rafael crosses the bank of Alum Gulch

Thence the line run South and East along the bank of Alum Gulch and following in the bound as called for in the title Quite a ways about fifteen leagues of land in the North and West the Survey extended for quantity

9 Question How long was the straight line made in the north

Answer according to the best of my recollection it would be since the grant called for the hills of the Roblar de Bois and the hills being crooked the line was run to suit the line of the hills

10 Question Describe the hills of the Roblar de Bois

Answer They are rolling hills and run about East & West from the bank of Alum Gulch to the Petaluma Santa Rosa road and probably three or four miles inside the North line of the Survey could have been run any where along those hills if it embraced the proper quantity of the land called for in the grant

11 Question Whether or not is there

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land from the seacoast and how far from the navigable waters of the Bay of San Francisco or San Pablo

Answer The Estero of Olompali is navigable and empties into the Bay of San Pablo and bounds a portion of the land.

The Rancho is about twenty seven or twenty eight miles from the sea. The house is thirty three or thirty four miles from the sea

The Rancho is about two miles across it from the side next to the sea

12 Question Have you made other surveys for General Vallejo and have you ever heard General Vallejo say how much land he claimed in 1846

Answer I have made other surveys for him and have never heard him say how much he claimed. I understood he claimed the Rancho of Suisun containing four leagues and the Rancho of Soscol containing nine or ten leagues and Rancho de agua Caliente in 1846 the last named Rancho contains two and a half leagues

The attorney of the claimant objects to the last question and answer on the ground that it is not competent to prove what is stated

13 Question To what paper was the answer given to you by General Vallejo attached

Answer It was attached as well as I recollect to the original title

Subscribed and sworn to before me on this 29th day of March A D 1854 Jasper O Farrell

Peter Lott [illegible]

Commissioner for taking Testimony &c certify the foregoing to be a true and correct copy of the original Depo in case No 250 M G Vallejo vs the U S for the place named Petaluma on file in this Office. In testimony whereof I have hereunto subscribed my name officially San Francisco Nov [illegible] 1854

Geo Fisher Secy

Filed in Office Nov 9th 1854 Geo Fisher Secy

[illegible] ND

Filed in Office Nov 9th 1854 Geo Fisher Secy

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Certified Copy Affidavit of M G Vallejo Case No 250

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Number 250

In the Claim of Mariano G. Vallejo To Petaluma Rancho

Mariano G. Vallejo the claimant in this case being duly sworn deposes and says

That the original draft or map of the tract of land called Petaluma claimed by him in this case was made by Augustin V. Zamorano and filed in the Expediente of the title to said land made to depend in 1834 by Governor Figueroa

That on the loss of the original title papers and traversing of said title by Governor Micheltorena in the year 1843,

He the deponent was furnished with a duly certified copy of said draft from the archives by General Jimeno the Secretary of the Government and legal custodian of said archives

That said duly authenticated draft or plan accompanied said title to said land by Governor Micheltorena and represented the land so granted,

That in the year 1847 about the month of deponent gave said draft or map to Jasper O. Farrell the then recognized official Surveyor of the Northern District of California requesting him the said Farrell to make a true and accurate map of the land

Represents in said draft and described in deponents title papers as the land or Rancho of Petaluma

That the said O Farrell made such survey and map for deponent but deponent has no recollection that said O Farrell ever returned to deponent the said draft and is certain that he never did return it to him That if said draft was ever returned to him it has been lost or destroyed and cannot now be found and procured

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That deponent has made diligent search for the same and cannot find it that he has no recollection of ever having seen it since it was delivered by the deponent to the said C Fauré in the year 1847 as aforesaid

M G Vallejo

Sworn to and subscribed before me this 9th day of February 1854 — The words and is certain that he received returned to him having been previously inserted on the second line from the bottom of the first page and the words and believes that it ever was returned to him having been previously erased from the said line and the following

J Thompson Campbell
Commissioner

I certify the foregoing to be a true and correct copy of the original affidavit on file in this Office in case Number 250 Mariano G. Vallejo vs The United States

In testimony whereof I have hereunto signed my name officially San Francisco November 6th 1854
George Fisher
Secretary

Filed in Office November 9th 1854
George Fisher
Secretary

Recorded in Evidence B. Vol 3. Page 697
George Fisher
Secretary

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Sosol
Original title papers
H. D. C. No 1
annexed to the suspension pue estendida hasta el
Depo: of pablo desahogo de la hacienda publica y la
de la Ira que aun yo tiene d- sufrir una cantidad
taken before considerable de miles de pesos pero admito
Com: la Oferta de los cinco mil ps en efectos de
H. D. Thornton Esqueimos p- las tropas p- la imperiosa
necesidad que tengo de ellos para mantener
los à esp efecto mando la Goleta California
para que se sirva cargar la con documentos
utiles de Maiz dos cientas cincuenta de
frijol, dos cientas arrobas de Carne seca y
quinientos pares de Zapatos ò los materiales
p- hacerlos que me informan no serle di
ficil remitir y conociendo tambien q- no le
sera à V. S muy pabroso suplico encarecidamente me mande dos mil pesos en plata
en consideracion à hallarme el Erario del
Departamento pem escaso q- desde mi llega
da à el no ha producido por no haber en
Toda de Luque mas de esto la Tropa
de mi Espidicion se acorde diariamente
con dinero en mémo por estar sugeta à di
verso metodo de contabilidad admor- y
costumbre y los presidiales como V. S sabe
del modo q- el Resto del Ejercito nacional
y emp servicio agradeceré sobre manera.
Lo que comunico à V. S para su conocim-
protestandole à la Voz mi consideracion
y aprecio.
Dios y Libertad Angeles Marzo 16 de 1843
Micheltra
Dn Comandte mtar de la linea de Stes
Ines à Sonoma Cor. D. Guadpe Vallejo

Manuel Micheltorena Gobernador Coman
dte General e Inspector de Ambas Calif-
ornias.

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Sello

Por cuanto el Ciudadano Mariano Guadalupe Vallejo Coronel de Caballeria y Comandte. Militar de la frontera de Sonoma ha pretendido para su beneficio personal y el de su familia el terreno conocido con el nombre de Rosel colindante por la parte del Norte con los terrenos nombrados Tulucay y Suscuin y al Sur el Estero de Carquinez: practicadas previamente las diligencias y averiguaciones concernientes segun lo dispuesto por leyes y reglamentos; usando de las facultades que me son conferidas a nombre de la Nacion Mejicana he venido en concederle el terreno mencionado declarandole la propiedad de el por las presentes letras, sujetandose à la aprobacion de la Exma Junta Departamental y bajo las condiciones siguientes.

1ª El interesado ocurrirá despues à este Gobno. la revalidacion del presente titulo en el papel del sello correspondiente presentando igualmente el diseño respectivo para poder con exactitud fijar los limites y los sitios de que se compone el terreno mencionado.

2ª podrá cercarlo sin perjudicar las servidumbres caminos y servidumbres lo disfrutara libre y exclusivamte. destinandolo al uso ò cultivo que mas le acomode pero dentro de un año fabricara casa y estara habitada.

3ª Solicitara del Juez respectivo que le de la posesion practica en virtud de este despacho por el cual se deslinden los linderos en cuyos limites pondrá à mas de las mojoneras algunos Arboles frutales ò silvestres de alguna utilidad.

4ª Si contraviniere à estas condiciones perderá su derecho al terreno y será denunciable por otro.

En consecuencia

mando que sirviendole de titulo el pres.te se tome razon de el en el libro à que corresponde y se entregue al interesado p.a su resguardo y demas fines. Dado en la Ciudad de los Angeles à quince de Marzo de mil Ochocientos cuarenta y tres.

Manl. Michel.a

Jeremeo. Arce Srio Int.o

Doc A. L. No. 1. continued

Que la tomada razon de este despacho à fo. 1.o

Arce.

Sello primero Ocho pesos:

Habilitado provicionalmente por la Aduana Maritima del puerto de Monterey en el Departamento de las Californias para los años de mil Ochocientos cuarenta y cuatro y mil ochocientos cuarenta cinco.

Michel Lorena Pablo de la Guerra

Sello

Manuel Michel Lorena Gobernador Comandante Gnal è Inspector de Ambas Californias.

Por cuanto el Ciudadano Mariano G. Vallejo Coronel de Caballeria y Comandante militar de esta frontera de Sonoma ha solicitado de este Gobierno la compra del terreno conocido con el nombre de Petaluma en la jurisdiccion de dicha frontera, colindante por la parte del Norte con los terrenos nombrados Tulucay y Suyuny y por el Este y Sur con el Estero de Carquines, Isla de la Laguna y Estero de Napa; practicadas previamente las diligencias y averiguaciones concernientes: usando de las facultades con que me hallo investido por el Supremo Gobierno de la Nacion Mexicana he venido en venderle el espresado terreno de Petaluma en la Cantidad de cinco mil pesos q.e recibi; este Gobierno à su satisfaccion; declarandole la propiedad de el por los presentes en cuya Virtud podrà ocuparlo poseerlo libre y esclusivamente, destinandolo al uso y efectivo q.e mas le acomode sin

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Restriccion alguna.

Por tanto mando que sirviendole de titulo el presente se tome razon de el en el libro respectivo y sea reconocido por todas las autoridades de los Departamtos de la Republica, entregandose al interesado como propiedad particular comprada al Gobierno del Departamto. en devida y legal forma Dado en Monterey à diez y nueve de Junio de mil ocho cientos cuarenta y cuatro.

Manl. Michelena

Gral. Arce Ord. mte.

Queda tomada razon de este Despacho en el Libro respectiva.

Arce.

Seleccion Office Feby 14th 1853.

Geo: Fisher Secy.

Translation of Title Papers

Govr of the Dept of Californias

I Transmit to you the title of the place named Soscol this Government regretting that it cannot accept the first of the offers which you make because the Supreme Government of the nation has ordered that all back pay be suspended which became due before the first of October 1841 which will serve you as a rule with respect to your subordinates

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Which suspension was made to continue until the public treasury should be relieved from its embarrassments and by which com has to suffer the loss of a considerable amount of some thousands of dollars but I do accept the offer of the five thousand dollars in articles of the produce of the country for the troops

On account of the imperious necessity which there for them in order to maintain them for which purpose I send the schooner California that you may have the goodness to load her with five hundred fanegas of maize Two hundred and fifty of frijol two hundred arrobas of dried meat and five hundred pairs of shoes or the material for making them which I am told it will not be difficult for you to send and knowing also that it will not be any inconvenient for you,

I earnestly request that you will send me two thousand dollars in silver in consideration of the fact that the treasury of the Department is short of funds as it has not received anything since my arrival, there having been no arrivals of vessels

and besides this the troops of my expedition are daily furnished with cash in hand as they are subject to a mode of payment administration and customs different from the Presidial troops as you know in the same manner as the rest of the national Army and for which service I will be exceedingly greatful

All which I communicate to you for your information assuring you at the

sanctions of my consideration and esteem
God and Liberty Angeles March 16th 1843
Signed Micheltorena

To
the Military Commandant of the Line
from Santa Ynez to Sonoma Colonel
Don Guadalupe Vallejo

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Manuel Micheltorena Governor Commanding
General and Inspector of both Californias

{ Seal of the
Dept of Californias }

Whereas Citizen Mariano Guadalupe Vallejo Colonel of Cavalry and Military Commandant of the Frontier of Sonoma has for his own personal benefit and that of his family Petitioned for the place known by the name of Soscol,

Bounded on the north by the lands named Tulucas and Suisun and South by the straits of Carquinez the proper measures and examinations being previously made as required by Laws and Regulations,

Using the powers conferred on me in the name of the Mexican Nation I have granted him the aforesaid land declaring to him the ownership of it by these presents subject to the approbation of the most Excellent Departmental Junta and under the following conditions

1. The person interested shall afterwards apply to this Government for the revalidation of the present title on paper of the proper stamp presenting also the respective map in order to be able to fix with accuracy the limits and the number of square leagues of which the aforesaid land consists

2. He may enclose it without prejudice to the crossings roads and servitudes and enjoy it freely and exclusively making such use or cultivation of it as may best suit him but within one year he shall build a house on it and it shall be inhabited

3rd He shall request the proper magistrate to give him juridical possession in virtue

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of this title by whom the boundaries shall be marked out in the limits of which he shall place besides the bounds some fruit or forest trees of some utility

4 If he shall contravene these conditions he will lose his right to the land and it will be subject to denouncement by another person

In consequence I order that this present serving him for a title note be made of it in the corresponding book and it be delivered to the person interested for his security and other purposes.

Given in the City of Los Angeles on the fifteenth of March eighteen hundred and forty three

Signed Micheltorena

Signed Francisco Arce

Secretary ad interim

Note has been made of this title in folio 1

Signed Arce

Stamp First Eight Dollars

Provisionally authorized by the maritime custom house of the port of Monterey in the Department of the Californias for the years eighteen hundred forty four and eighteen hundred and forty five

{Maritime Custom House of Monterey} Manuel Micheltorena Governor Commanding General and Inspector of both Californias

Whereas Citizen Mariano G. Vallejo colonel of Cavalry and Military Commandant of the frontier of Sonoma has requested this Government the purchase of the land known by the name of Soscol in the jurisdiction of said frontier

Bounded on the North side by the land named Tulucay and Suysun and on the East and South by the Straits of Carquinez, Ysla de la Yegua and Estero de Napa the proper measurements and examinations being previously made using the powers with which I am invested by the supreme Government of the Mexican Nation I have sold to him the aforesaid land of Soscol

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for the sum of four thousand dollars which this Government has received to its satisfaction declaring to him the ownership of it by these presents in virtue of which he may occupy it and possess it freely and exclusively making such use or cultivation of it as may best suit him without any restriction

Wherefore I order that this present serving him for a title note be made of it in the respective book and that it be recognised by all the authorities of the Departments of the Republic delivering it up to the person interested as private property purchased from the Government of the Department in proper and legal form.

Given in Monterey on the nineteenth of June one thousand eight hundred and forty four

Signed Manuel Micheltorena

Signed Francisco Arce

Secretary ad interim

Note has been made of this title in the respective Book

Signed Arce

Stamp First Eight Dollars

Provisionally authorised by the Maritime Custom House of the Port of Monterey in the Department of the Californias for the years eighteen hundred and forty four and eighteen hundred and forty five

Signed Micheltorena Signed Pablo de la Guerra

{Maritime Custom House of Monterey} Pro Pres Governor ad interim of the Department of Californias

The most Excellent Departmental assembly in session of this day has decreed the following

approved the Grant made by the Superior Departmental Government in the titles issued on the 15th of March one thousand eight hundred and forty three and nineteenth of June one thousand and eight hundred and forty four in favor of Citizen M. G. Vallejo of the place known by the name of Soscol in the jurisdiction of Sonoma which

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lands including the Islands which is situated
near the point in the middle of the straits
of Carquinez and between the Bays of San Pablo
and Suisun

In payment of the sums of money
which Supervisors and other supplies which
the agents and Navy Yards made to the Gov-
ernment and Servants of the Department
Interior
expressly with the approval of the Secre
Secretary of the Interior

and for the security
of the party Don Mariano G. Vallejo states under
oath

Sworn in the city of Los Angeles on the
twenty sixth day of September eighteen hundred
and forty five

Signed Pico Pico
Signed Jose Maria Covarrubias
Secretary

Filed in office July 17th 1852
George Fisher
Secretary

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S-J 1.2.D.12

Sonoma

Expediente

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Certified Copy

23-24

Jurisdiccion de Sonoma

1843.

Espediente promovido por D. Manuel Vallejo pretendiendo el parage de "Petaluma" No. 306.

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2. L.D.R. Monterey 21 de Octbr. de 1843. Exmo. el S. Gov. del despacho de este supremo Gobo. Departamental Michelta

El S. Gobernador del Departamento de California. Mariano G. Vallejo Coron. de Caballeria ante V. E. como mejor convenga dice; que desde el año de mil ochocientos treinta y cuatro se le concedio por el gobierno y posee actualmte. el paraje de Petaluma que se corporizo; pta. la Esema Dcpn. Territl. pero habiendosele estraviado los titulos Originales ocurrio à la secretaria del Gobierno por el Espediente con Objeto de reponer los documentos dichos mas à q. accidente sucedio otro que fue el de haberse tambien estraviado el espedte. Original; causa por la cual remitio con nueva instancia al Gobo. Departamental el diseño certificado que tenia en su poder el que suscribe à la Vez que el pais fue invadido por la Escuadra Norte americana y habiendose posesionado de esta Capital cayo en poder de los invasores el Archivo como es publico. De este trastorno gral. resulto que se estraviase de nuevo los documentos à que me refiero sin tener esperanza de volverlos à conseguir. Por las razones espuestas A. V.E. suplica se sirva mandar se le entienda y conforme el titulo correspondte. al terreno mencionado que es de esten cion de diez sitios de ganado menor poco mas ò menos y va marcado en el diseño adjunto el que promete remitir exactamente delineado de Sonoma luego que se levante su nuevo plano juridl

Monterey Octbr. 22 de 1843.

M. G. Vallejo

4. L.D.R. Esemo Sor Gobernador

Desde el tiempo à que se refiere el Sor Vallejo tiene ocupado con sus trabajos el terreno de petaluma y por lo mismo entiendo deberse le dar el titulo que pide por haberselo ya dado con anterioridad, salvo la disposicion de V.E.

Manl. Jimeno

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Monterey Octbr. 21. de 1843.
Conf.e al informado espidase el titulo con
las condiciones de Ley.
Michelt.a

Copia del Expdte. Monterey 22 de Obre. de 1843.
continued Vista la peticion con que da principio
este Espediente el informe que antecede
con todo lo demas que de tubo presente y ver
conviene de conformidad con las leyes y regla
S. G. D. 12 mentos de la materia declaro al Coronel
D. Mariano G. Vallejo dueño del paraje nom
brado petaluma colindante al Sur con el Es
tero de Sonpali al N. y E. con el Rio de So
318 ND noma, Agua Caliente y Sulucos y al P. con
PAGE 58 las Lomas del Roblar de la Musica rigiendo
la estencion de diez sitios de ganado mayor
Librese el correspondte. despacho, tomese ra
zon en el libro respectivo y dirijase este Expdte.
à la C. junta p.a su Aprovacion. El C. J.
Gobernador asi lo mando decreto y firmo
f.a del libro. de este año.
Angeles Setiembre 3 de 1845.
Dado cuenta en sesion de hoy con este Es
pediente à la Honble Asamblea Departa
mental se mando pasar à la Comision de
Terrenos Baldios.

Pio Pico Presdt.a

Agustin Olvera Secro.

Impuesta con bastante detenimiento la Co
mision de terrenos baldios del Espediente
promovido p.r el ciudadano Mariano G. Val
lejo en pretencion del paraje conocido con el
nombre de petaluma sitio contiguo à la
poblacion de Sonoma; y conocido de q.e
las diligencias practicadas en dicho espe=
diente fueron bastante para que el supremo
Gobierno del Departamento le hubiese le
galmente concedido el mencionado ter
reno presenta à la Deliveracion de V. E. la
siguiente proposicion.
Se aprueba la concesion hecha p.r el Supremo
Gobierno del Departamento en titulo librado
con fha 22 de Octubre de 1843. en favor
del ciudadano Mariano G. Vallejo de diez

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activos de Denado mayor en el paraje conocido con el nombre de Petaluma con tigua en la poblacion de Sonoma de entera conformidad con la ley de 18 de Agosto de 1824 y el Artº 5º del Reglamento de 21 de Novbre de 1828.

Sala de comisiones en la Ciudad de los Angeles. Setiembre 29. de 1845

Dn Mariano de la Guerra
Narciso Botella

J. S. D. K Angeles Setiembre 26. de 1845.
En sesion de hoy se aprobo por la C. Asamblea Departamental la proposicion del dictamen que antecede; mandando se devuelva el expediente Original al Excmo Sor Gobernador para los fines convinientes.

pio pico
Agustin Olvera Secrio

En la fha se dio la parte la copia respectiva.

Office of the Surveyor General of the United States for California

I Samuel D. King Surveyor General of the United States for the State of California and as such now having in my Office and under my charge and Custody a portion of the Archives of the former Spanish and Mexican Territory or Department of Upper California do hereby certify that the seven preceeding and hereunto annexed pages of tracing paper numbered from One to Seven inclusive and each of which is verified by my initials (S. D. K.) exhibit true and accurate copies of certain papers now on file and forming part of the said Archives in my Office.

(S. D.) In testimony whereof I have hereunto signed my name Officially and affixed my private Seal (not having a seal of Office at the City of San Francisco this 26th day of February 1852

Signed) Samel D. King
Surveyor Genl Cal.

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I George Fisher, Secretary to the Board of the U. S. Land Commission for Ascertaining and Settling private Land Claims in the State of California, do hereby Certify that the foregoing is a true and correct Copy of a Spanish Document authenticated by Scmr. D. King Esqr. lately U. S. Surveyor General for the said State of California purporting to be an Espedte. filed in this Office on the 21st day of May 1852 in Case No. 250 on the Docket of the said Board.

In testimony whereof I have hereunto subscribed my name Office of the Secretary of said Commission San Francisco State of California aforesaid this 2nd day of October A. D. 1854.

Geo: Fisher Secy

Filed in Office October 2nd 1854

Geo: Fisher Secy

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Translation of Expediente.

Stamp Third ½ One Dollar

Provisionally authorized by the Maritime Custom House of the Port of Monterey in the department of the Californias for the year one thousand eight hundred and forty ½ three

(signed) Micheltorena (signed) Manuel Castañares

Sold

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To his Excellency the Governor of the Department of the Californias:

Monterey Oct. 21, 1843

Let the Secretary of State of this supreme departmental Government report

(signed)

Micheltorena

Mariano G. Vallejo, colonel of cavalry, before your Excellency, in the most favorable manner says: that in the year one thousand eight hundred and thirty ½ four, there was granted to him by the Government and he now possesses the place of Petaluma which was confirmed by the Most Excellent Territorial deputation; but the original title having been mislaid, he applied to the office of the Secretary of State for the expediente, for the purpose of making out again said document, but to that accident succeeded another which was the loss of the original expediente for which reason he, (the subscriber) remitted to the departmental Government the map which he had in his possession, with a new petition at the time that the country was invaded by the North American squadron, and having taken possession of this Capital, the archives, as is well known fell into the power of the invaders From this general confusion, it resulted that the papers he now sees again lost without hope of obtaining them again.

For the foregoing reasons he prays Your Excellency to have the goodness to order that the corresponding title be issued to him and Confirmed for the land referred to which is in extent two square leagues

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more or less, and is marked out on the annexed map, which he promises to remit accurately drawn from Sonoma as soon as the new survey can be made. He knows &c.

Monterey, Oct 22 1843

(signed)

M. G. Vallejo

To his Excellency the Governor.

Since the time referred to by Senor Vallejo he has complied with his propriety the land of Petaluma and therefore I think the title to which he asks should be given him, it having been previously given to him, saving your Excellencys disposition

dated as above

(signed)

Manuel Jimeno

Monterey Oct 21. 1843

In conformity with the report, let the title be issued with the conditions of the law.

(signed)

Micheltorena

Monterey Oct 22. 1843.

Having seen the petition with which this Expediente commences, the foregoing report, together with all the information which was borne in mind and deemed proper to be considered in conformity with the laws and regulations in the matter. I declare, Colonel Mariano G. Vallejo, owner of the place named Petaluma bounded on the south by the Estero de Olompali, north and east by the rivers of Ynoma Agua-Caliente, and Encinosa, and on the west

65 291 by the hills of the "Roblar de la Miseria" its extent being two square leagues. Let the corresponding title be issued, but note be made in the proper book and folio of the book for this year and direct the expedinte to the (most) Excellent junta for its approval. His Excellency the Governor thus ordered, decreed and signed

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Angeles, Sept. 3. 1845

This Expedinte having been this day reported to the most Excellent Departmental Assembly, it was ordered to be passed to the Committee on vacant lands

(signed)

Pio Pico

President

(signed)

Agustin Olvera

Secretary.

Most Excellent Sir

The Committee on vacant lands, having carefully examined the expedinte formed by citizen Mariano G. Vallejo, petitioning for the place known by the name of Petaluma, near to the town of Sonoma, and satisfied that the proceedings made in that expedinte were sufficient (to authorize) the superior departmental Government to have legally granted him the aforesaid land, passes to the deliberation of Your Excellency the following proposition

"That approve the grant made by the superior departmental Government in the title issued Oct. 22. 1843. in favor of citizen Mariano G. Vallejo, for two square leagues of land, in the place known by the name

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Palomas, near the line of Sonora, in entire conformity with the law of Aug. 18. 1824. and art 5 of the regulation of Nov. 21. 1828."

Hall of the Committee in the city of Los Angeles, September 23. 1843.

(Signed) Francisco de la Guerra

(Signed) Narciso Botella

Angeles September 25. 1845

In vision of this day, the foregoing petition was approved by the most Excellent Departmental Assembly ordering that the original expediente be returned to His Excellency the Governor for the convenient uses.

(Signed) Pio Pico

(Signed) Agustin Olvera
Secretary

On the same day the proper copy was issued to the party

Filed in Office 31 May 31. 1852

(Signed) Geo. Tinkham Gray

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1\. Las comisiones de Colonizacion y terrenos Valdios à quien se pasò el Espediente cuya formacion provocò por pretencion el Ciudadano Mariano G. Vallejo el parage nombrado Petaluma lo han examinado con la circumspeccion q. corresponde teniendo al mismo tiempo presente la ley de 18 de Agosto de 1824 sus concordantes y disposiciones generales que en 21 de Noviembre de 1828 dictò el supremo Gobierno de la Union para el mejor cumplimiento de la prima del ecsamen del espediente se ha penetrado la comision de la Opinion q. ya tenia de la escrupolosidad acierto y tino con que el Sr. Gefè politico lo mandò instruir de suerte que en su formacion se echa va algun requisito escencial ni de los practicados.

Dosed Certified Copy Exhibit R annexed to Depo: of Josè de la Rosa taken before Comr. H. G. Thornton in Case No. 250

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Por lo dicho concluye la Comision ofeciendo à la deliveracion de esta Ecma Depn. la siguiente proposicion.

1a. Se aprueba la concesion hecha al Ciudadn. Mariano G. Vallejo del parage nombrado petaluma concedido en 18 de Junio de 1834. de entera conformidad con lo prevenido en la ley de 18 de Agt. de 1824 y el Artº. 8º. del Reglamento de 21 de Novr. de 1828.

Monterey 21 de junio de 1834

Signed) Carlos Antº. Carrillo

Signed) Josè A. Estudillo

Signed. Josè Castro.

Monterey 21 de Junio de 1834

En sesion de este dia aprovò la Ecma Diputacion la proposicion del dictamen antecedente, mandandose se devuelva el Espediente al Sor Gefè Supr. Polito. para los fines consiguientes.

Signed) Figueroa

Signed) Juan. B. Alvarado Secret.

Monterey Junio 21 de 1834.

En Vista del acuerdo de la Ecma

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Diputacion Territorial del dia de hoy en confirmacion del terreno de petaluma pretendido por D. Mariano Guadalupe Vallejo, libese el titulo respectivo tomese razon en el libro à q.e corresponde y entreguese al interesado para su resguardo y demas fines El Sor D. Josè Figueroa G.l de Brigada Com.te Gen.l Inspect.r y Gefè sup.r politico de la alta California asi lo mandò decretò y firmò de q.e doy fè.

Signed Josè Figueroa

(L.S.) Manuel Micheltorena General de Brigada del Egercito Mexicano Ayudante Gen.l General de la plana Mayor del mismo, Gobernador, Comandante General e Inspector del Departamento de California por cuanto el Sor Coronel D. Mariano G. Vallejo ha hecho presente à este Gobierno en Solicitud de 19 del corr.te que à mas de los diez sitios de ganado mayor que tiene concedidos, en el parage de petaluma marcados y reconocidos desde el Rio de Sonoma hasta el Estero de Colompali y pozas de Cantua resulta un sobrante de tierra no incluidos en el diseño Original que existe en la Secretaria de este Gobierno cinco sitios y un caballeria à la Suma de dos mil pesos que apetece de sus sueldos vencidos en el tiempo q.e desempeñò la Comandancia Gen.l de este Departamento y por servicios prestados à la patria; practicados previas las diligencias y averiguaciones concern.tes y de toda conformidad con las leyes de la materia he venido en concederle en propiedad por las presentes letras à nombre de la Nacion Mexicana la mencionada cantidad de sitios que solicita en virtud de la Autoridad con que me hallo investido y bajo las condiciones siguientes

1.a Podra cercarlo y dedicarlo al uso que mas le convenga sin perjudicar las heredades, caminos y servidumbres,

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Exhibit R. continued

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2a El terreno de que se hace mencion no pasara de los linderos que han sido hasta aqui reconocidos por de petaluma a marcados en el titulo respectivo de dicho Rancho en el cual se especifican de una manera clara y positiva.
3a El interesado otorgara el recibo correspondt. à la cantidad de dos mil pesos à favor del Erario nacional.
4a El juez que le diere posesion de dicho terreno, lo hara medir conforme à Ordenanza.

En consecuencia mando que teniendose el presente titulo por firme y valedero, se tome razon en el libro que corresponde y se entregue al interesado pa su resguardo y demas fines.
Dado en la Ciudad de Monterey à los veinte y dos dias del mes de Junio de mil ocho cientos cuarenta y cuatro.

Signed) Manl. Michelta
Signed) Franco Arce Srio Intº
Queda tomada razon de este despacho en el libro respectivo.

Arce:

(G. J.) Pio Pico Gobernador Interino del Departamento de las Californias
La Escma Asamblea Departament. en sesion de hoy ha acordado lo sigte
Se aprueba la concesion hecha por el Supr. Gobno del Departamento en titulo librado con fha 22 del mes de Junio del presente año en favor del Ciudno Mariano G. Vallejo, de cinco sitios de ganado mayor por la suma de dos mil pesos y servicios prestados à la patria cuyo terreno se halla en la comprencion de petaluma, contiguo à la poblacion de Sonoma de entera conformidad con la ley de 18 de agosto de 1824 y el Art. 5o del Reglamento de 21 de Noviembre de 1828.
Y para resguardo de la parte interesada lo hago asi saber. Dado en la ciudad de los Angeles à doce de setiembre de

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de mil ochocientos cuarenta y cinco.
(signed) Pio Pico Srio.
Signed Josè Mª Covarrubias.

L.S. Manuel Micheltorena General de Brigada del Ejercito Mejicano Ayudte General de la plana Mayor del mismo Gobernador, Comandante e Inspector del Departamento de Californias.

Por cuanto el Coronel D. Mariano G. Vallejo ha pretendido para su beneficio personal y el de su familia el terreno conocido con el nombre de "petaluma" colindante al S. con el Estero de Olampali al N. y E. con el Rio de Sonoma, Agua Caliente y Guilocos y al S. con las Lomitas del Roblar de lo Miseria practicados previamente las diligencias y averiguaciones correspondientes segun lo dispuesto por Leyes y Reglamtos usando de las facultades que me han conferidas à nombre de la Nacion Mejicana he venido en concederle el terreno mencionado declarandole la propiedad de el por las presentes letras sujetandose à la aprovacion de la Excma Junta Departamental y bajo las condiciones siguientes
1ª podrà cercarlo sin perjudicar las haveras caminos y servidumbres lo disfrutara libre y exclusivamente destinandolo al uso ó cultivo que mas le acomode.
2ª Solicitara del juez respectivo que le de la posesion practica en virtud de este despacho, por el cual se demarcaran los linderos en cuyos limites pondrà à mas de las mojoneras algunos arboles frutales ó silvestres de alguna utilidad.
3ª El terreno de que se hace donaciones de diez sitios de ganado mayor poco mas ó menos segun explica el diseño que corre agregado al Expediente respectivo El juez que diere la posesion lo hara medir conforme à Ordenanza quedando el sobrante que resulte à la Nacion para los usos convinientes.

Exhibit R
continued

4ª Si contravinière à estas condiciones perderá su derecho al terreno y será denunciable por otro. En consecuencia mando que sirviendole de titulo el presente y teniendose por firme y valedero se tome razon de el en el libro respectivo y se entregue al interesado para su resguardo y demas fines. Dado en Monterey à Veinte y dos de Octubre de mil ochocientos cuarenta y tres.

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Signed Mem.l Michelª
Signed Mem.l Jimeno Rio.

Que dà tomada razon de este despacho en el libro respectivo à fs. 1ª del libro 2º

Jimeno.

Pio Pico Gobernador Interino del Departamento de las Californias.

La Excmà Asamblea Departamental en sesion de hoy ha acordado lo siguiente Se aprueba la concesion hecha por el superior Gobierno del Departamento en titulo librado con fha 22. de Octubre de 1843 en favor del Ciudadano Mariano G. Vallejo, de diez sitios de Ganado mayor en el Paraje conocido con el nombre de Petaluma antiguo con la poblacion de Sonoma, de entera conformidad con la ley de 18 de Agt.º de 1824 y el Articulo 5º del reglamento de 21 de Noviembre de 1828 y para resguardo de la parte de D. Mariano G. Vallejo lo hago asi saber. Dado en la Ciudad de los Angeles en este papel comun por falta del sellado à veinte de Deciembre de mil Ochocientos cuarenta y cinco.

Signed. Pio Pico Rio.

Signed. Jose Mª Covarrubias

I, George Yount, Secretary to the Board of the U. S. Land Commissioners for ascertaining and settling private Land claims in the State of California do hereby, that the foregoing is a true and Correct of a Spanish Document exhibited and filed

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on the 2nd day of June 1852 in Case No 250. on the Docket of the said Board now in this Office.

In Testimony whereof I have hereunto subscribed my name Office of the Secretary of said Commissioners San Francisco State of California aforesaid this 2d day of October A. D. 1854

Geo: Fisher Secy

Filed in Office October 28th 1854

Geo: Fisher Secy

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Translation of Report, Approval & Order, in Exhibit R.

The committee on colonization and vacant lands to which was referred the expediente formed upon the petition of citizen Mariano G. Vallejo for the place named "Petaluma" have examined it with due circumspection having before them at the same Time the law of the 18th of August 1824; its concordants and the general disposition adopted by the Supreme Government of the nation on the 21st November 1828, for the better fulfilment of the former. From the examination of the expediente the committee are impressed with the which they already entertained of the scrupulous responsibility and judgement with which His Excellency the Political Chief sent it for information in order that nine of the essential requisites for the proceedings had should be omitted in the formation thereof.

Whereupon the Committee conclude, proposing for the deliberation of this Most Excellent Deputation the following propositions:

1st The grant made to citizen Mariano G. Vallejo of the place named "Petaluma" made on the 18th of June, 1834, in entire conformity with the provisions of the law of the 18th of August, 1824, and article 5th of the regulation of November 21st 1828 is approved.

Monterey June 21, 1834.

(signed) Carlos Anto. Carrillo
(") José A. Estudillo
(") José Castro.

Monterey June 21, 1834.

In the session of today the Most Excellent Deputation approved the proposition of the foregoing report, and the expediente to be returned to his Excellency the Superior Political Chief for suitable purposes

(signed) Figueroa

(signed) Juan B. Alvarado, Secretary

74 291 Seal 3d Five Reales

Provisionally authorized by the administration of the Maritime Custom House, at Monterey for the years 1833 and 1834

(sgd) Figueroa (sgd) José Rafael Gonzales

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Monterey June 21, 1843

In view of the resolution adopted by the most Excellent Territorial deputation on the day of this date, in confirmation of the land of "Petaluma" solicited by Don Mariano G. Vallejo, let the proper title issue and be entered in the proper book and delivered to the party interested for his security and other purposes.

His Excellency Don José Figueroa, General of Brigade, Commanding General Inspector and Superior Political Chief of Upper California thus ordered decreed and signed whereof I certify

(Signed)

José Figueroa

Filed in office June 2d 1852

(Signed)

Geo Fisher Secy

H 5 291

Translation of Title of Extention and Approval

Stamp First Eight Dollars.

Provisionally authorized by the Maritime Custom House of the Port of Monterey in the department of the Californias for the year one thousand eight hundred and forty four and one thousand eight hundred and forty five

(signed) Micheltorena (signed) Pablo de la Guerra

(Seal)

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I Manuel Micheltorena General of Brigade of the Mexican Army, Inspector General of the staff of the same, Governor Commanding General and Inspector of the department of Californias

Whereas, Colonel Don Mariano G. Vallejo has made representation to the government in petition of the 19th instant that besides the ten sqrare leagues which has been granted to him in the place of Petaluma marked out and recognized from the river of Sonoma to the Estero of Pampolie and "Sasay de Cantua" there proves to be a surplus of five sqrare leagues of land included in the original map, which exists in the office of the Secretary of this government, and in consideration of the sum of two thousand dollars, which he offers from his salary which became due him at the time he discharged the duties of Commanding General of the department, and for services rendered to the Country, the proper measures and examinations being previously made, and in entire conformity with the laws on the matter, I have determined to grant to him in fee, by these present letters in the name of the Mexican Nation the aforesaid number of sqrare leagues which he acquires in virtue of the authority vested in me and under the following conditions:

1st He may enclose it and dedicate it to the use which may best suit him, without prejudice to the crossings, roads and servitudes,

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2d The land of which mention is made, shall not pay the boundaries which have up to this time been recognized as those of Petaluma, mentioned in the exposition title of said rancho in which they are described in a distinct and positive manner

3d The person entitled will execute the receipt corresponding to the amount of two thousand dollars in favor of the national treasury.

4th The magistrate who may give the possession of said land will cause it to be measured in conformity with the ordinance

In consequence I order that the present title being filed as prescribed note be made of it in the book to which it belongs and it be delivered to the interested person for his security and other purposes

Given in the City of Monterey on the 22d day of the month of June one thousand eight hundred and forty four

(Signed) Manuel Micheltorena

(Signed) Francisco Arce
Secretary ad interim

Note has been made of this title in the proper book

(Signed) Arce

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Stamp Second Four Dollars

Provisionally authorized by the Maritime Custom House of the Port of Monterey in the department of the Californias for the years 1844 and 1845

(Signed) D Micheltorena (Signed) Pablo de la Guerra

Cod

Pio Pico Governor ad interim of the Department of the Californias

The most Excellent Departmental Assembly in session of this day, has decreed the following

"Whereas, the grant made by the Supreme Government of the department, in the title issued with date the 22d of the month of June of the present year in favor of citizen Maria G. Vallejo, of six square leagues for the sum of two thousand dollars and services rendered to the country - which land is included in Petaluma, near the town of Sonoma in entire conformity with the law of August 18. 1824 and article 5 of the regulation of Nov 21. 1828."

And for the security of the party interested I thus make it known

Given in the City of Los Angeles on the 12th of September Eighteen hundred and forty four

(Signed) Pio Pico

(Signed) José Maria Covarrubias
Secretary

Filed in office May 31. 1852

(Signed) Geo Tinkham Secy

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19 291

Translation of Title & Approval.

Stamp Vent. Eight Dollars

Provisionally authorized by the Maritime Custom House of the Port of Monterey in the department of the Californias for the year one thousand eight hundred and forty three

Signed) Micheltorena (Signed) Manuel Castañares

L S

Manuel Micheltorena, General of Brigade of the Mexican Army, Adjutant General of the Staff of the same, Commandant General and Inspector of the department of the Californias

Whereas Colonel Don Mariano G. Vallejo prays for his own personal benefit and that of his family, petitioned for the land known by the name of Petaluma, bounded on the south by the lakes of Olompali, north east by the rivers of Sonoma, Agua Caliente and Encinal and west by the hills of the Rancho de la Misión the proper means and examination being previously taken as required by laws and regulations giving the power conferred on me, in the name of the Mexican nation I have granted him the aforesaid land declaring to him the ownership of it by these presents, subject to the approval of the Most Excellent Departmental Junta and under the following regulations, viz:

1st He may enclose it without prejudice to the crossing roads and servitudes and enjoy it freely and exclusively making such use of it or cultivation as may best suit him

2d He shall repair to the proper magistrate to give him judicial possession in virtue of this title, by whom the boundaries will be marked out, in the limits of which, besides the land marks he shall place some fruit or fruit trees of a useful character

3d The land of which donation is made, is for ever hereafter a

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little more or less as shown by the map which goes attached to the inspector's depositions. The magistrate who may give the passport will cause it to be measured in conformation with the ordinance, leaving to the native for its convenient use the surplus which may result

4th If he shall contravene these conditions he will lose his right to the land and it will be subject to denouncement by another

In consequence I order that the present serving him as a title and being stable as firm and valid, note be made of it in the respective book, and it be delivered to the person interested for his security and other purposes

Given in Monterey on the twenty second of October one thousand eight hundred and forty three

(signed) Manuel Micheltorena

(signed) Manuel Jimeno
Secretary

Note has been made of this title in the respective book on folio 1 of Book second

(signed) Jimeno

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ND

81 291 Pio Pico Governor ad. interim of the Department of the Californias

The Most Excellent Departmental Assembly in sesion of this day has decreed as follows:

"Approved the grant made by the Superior Government of the department in title issued on the 22d of October 1843, in favor of citizen Mariano G. Vallejo, of ten square leagues, in the place known by the name of Petaluma, next to the town of Sonoma, in entire conformity with the law of August 18. 1824, and article 5th of the regulations of November 21. 1828"

And for the security of the party Don Mariano G. Vallejo, I thus make it known

Given in the City of Los Angeles on this common paper for want of Stamped on the twenty sixth of September one thousand eight hundred and forty five

(Signed) Pio Pico

(Signed) José Ma. Covarrubias
Secretary

Filed in Office May 31. 1852

(Signed) Geo Fisher Jeay

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Number 291 }
M G Vallejo } For a place called
and assignees vs } Suscol situated in
The United States } the County of

Opinion of the Board

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And the documentary documents and the proofs in this case present the following facts for the consideration of the Board. That Vallejo made application to purchase the tract of land called Suscol in the year 1843 and made two propositions for the consideration of the Governor the first to receive the grant in full consideration for a debt which was due to him for military services

Secondly to pay to the Government the sum of five thousand dollars the latter proposition was accepted on the part of Governor Micheltorena and thereupon the said Governor issued a grant to the said Vallejo on the 16th day of March 1843 to remain [illegible] until the same could be surveyed and the amount ascertained and a map [illegible] representing the same

And an order was sent to Vallejo for two thousand dollars in money and the balance in supplies for the army and Captain Cooper was despatched with a vessel to receive the supplies and [illegible] that he did receive a vessel load of supplies from Vallejo in pursuance of and [illegible] thereof in the said order

On the 19th day of June 1844 Governor Micheltorena issued a final grant for the place and for the whole of the land within its boundaries irrespective of the amount that it should be found to contain and in which grant he acknowledges that the five thousand dollars had been received by the Government

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the proof of occupancy and cultivation required by the colonization laws is abundant and beyond doubt and on the 26th day of September 1845 the proceedings received the full approval of the Departmental Assembly and the only question of doubt is that of quantity which question has been settled by the Board in case number where a grant has been issued for a consideration and a stipulated price paid for the land and also in again in case number 250 Valley of [illegible] [illegible] reported as of todays proceeding of this Board

We think this case entitled to a confirmation and a decree will be entered accordingly

(Confirmed)

Filed in Office May 22nd 1855

Signed

Geo Fisher

Secretary

Recorded in Record of Decisions Vol 4 699

Signed

Geo Fisher

Secretary

2/291 —

85 —

Decree of Confirmation

Number 291
M. G. Vallejo and
Assignees vs
The United States

In this case after hearing the proofs and allegations it is adjudged by the Commission that the claim of the said Petitioners is valid, and it is therefore decreed that their application for a confirmation thereof be allowed.

The land of which confirmation is hereby given is situated in the County of and called Soscol and bounded as follows to wit

On the North by lands owned Tulucaz and Suisun and on the East and South by the Straits of Carquinez and Estero de Napa.

Reference being had to the Grant and Map and the deposition of C Farrell on file in this cause.

R Aug Thompson

S B Farwell
Commissioners

Filed in Office May 22nd 1855
Signed
Geo Fisher
Secretary

Recorded in Record of Decisions Volume 2 page Two
Signed
Geo Fisher
Secretary

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And it appearing to the satisfaction of the Board that the land hereby adjudicated is situated in the Northern District of California it is hereby ordered that two transcripts of the proceedings and of the decision in this case and of the papers and evidence upon which the same are founded be made out and duly certified by the Secretary one of which transcripts shall be filed with the Clerk of the United States District Court for the Northern District of California and the other be transmitted to the Attorney General of the United States

291
Dup

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Office of the Board of Commissioners,
To ascertain and settle the Private Land Claims in the State of California.

I, George Fisher — Secretary to the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, do hereby certify the foregoing Eighty six — pages, numbered from 1 to 86, both inclusive, to contain a true, correct and full Transcript of the Record of the Proceedings and of the Decision of the said Board, of the Documentary Evidence and of the Testimony of the Witnesses, upon which the same is founded, on file in this Office, in Case No. 291, on the Docket of the said Board, wherein

M. G. Vallejo & Assignee —

the Claimant s against the United States, for the place known by the name of "Soscol." —

In Testimony Whereof, I hereunto set my hand and affix my private Seal (not having a Seal of Office) at San Francisco, California, this Eighth — day of November A. D. 1855, and of the Independence of the United States of America the ~~seventy~~ eightieth.

Geo: Fisher

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U. S. DISTRICT COURT,

Northern District of California.

No. 318 — 318

THE UNITED STATES, ND

vs.

G. Vallejo & Assignees.

TRANSCRIPT OF THE RECORD

FROM THE

BOARD OF U. S. LAND COMMISSIONERS.

In [illegible] No. 2 [illegible]

Filed, November 7th 1853

[illegible]

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Office of the Attorney General of the United States,

Washington, 31 Dec. 1855.

291 "Soscol"

M. G. Vallejo's Assigns Claimants

You will please take notice that in the above case, decided by the Commissioners to ascertain and settle private land claims in the State of California in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 3rd day of December. 1855, the appeal in the district court of the United States for the Northern district of California will be prosecuted by the United States.

Cushing

Attorney General.

No. 318 Okl.

U. S. District Court
Northern Dist of Calª

United States
vs
M. G. Vallejo & Assignees.

Notice of Appeal in
Case no. 291.

Filed Febry 1. 1856
J. Chever
Deputy

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Dre

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To the Honorable District Court of the United States in and for the Northern District of California.

The United States
Appellants
vs
Mariano G. Vallejo & ux[illegible]
No 291

The Petition of the United States by their Attorney represents: that this cause is an application for a review of the decision of the Board of Commissioners whereby the claim of the said appellee was confirmed as appears by reference to the records in the case: That a transcript of the said Records was filed in this Court on the 7th day of November 1855: that a notice of appeal was filed on the [illegible] day of [illegible] and that the land claimed lies in the said District. That the said claim is invalid. Wherefore appellants pray that the said decision of the Board be reversed & that this Court decree the said title to be invalid. Respectfully &c.

J. W. Ingalls
U.S. Dist Atty.

two

No 318

U.S. District Court

The United States app

vs

M. G. Valley & als Resp

Petition of appeal

Clerk

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Filed Feby 15. 1856.

B. Chaves
Deputy

two

№ 318.

U.S. District Court

Mariano G. Vallejo et al Respts
vs.
The United States Appt

Answer

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Mariano G. Vallejo & others the claimants in the above case in answer to the petition therein filed avers and says that their title to the land therein claimed is valid

They therefore pray that the decision of the Board of Land Commissioners be affirmed and the title of the said claimants decreed to be valid

W. W. Reed
Att'y for Respts.

three

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U.S. District Court

Mariano G. Vallejo & others
Respondents

ads.

The United States.
Appt.

Answer

Brooks

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Filed Febry 15. 1856.
by Chevers
Deputy

three.

UNITED STATES DISTRICT COURT,
Northern District of California.

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San Francisco, March 14 1857

ON this day, before Cutler McAllister a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came José, Ramon, Mesa a witness produced on behalf of the United States

in Case No. 318, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 281 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows—his evidence being interpreted by Clinton Palmer a sworn interpreter

PRESENT:

B.C. Brooks Atty for Claimants
U.S. Dist Atty —

QUESTIONS BY U.S. Dist Atty

Quer Your name, age, & occupation —
Ans José, Ramon, Mesa. 32. In San Rafael in Marin County - I am a ranchero. I have lived in Sonoma & around there ever since I was 15 years old - I know M.G. Vallejo I have known him ever since I was 15 years old I am acquainted with the grant Lakeal Rancho, I have brought have lived in the house of Don Salvador Vallejo ever since I have been a man his house was about 40 yards from M.G. Vallejo's House in Sonoma. I mean I lived there about 17 years at the age of 15 Don Mariano G. Vallejo took me as a Soldier in the Presidio of San Francisco de Asis. I was sta-

tioned at the Presidio about a year. I was young at the time and do not recollect very well - I served as a Soldier about 12 years. I was stationed at the Mission the rest of the time. I knew Governor Micheltorrena - I have had conversations with Micheltorrena but not upon the subject of the Suscol Grant -

I was discharged as a Soldier at the time that Micheltorrena came to this Country, at that time the Mexican Government occupied the Suscol Ranch for the troops, at that time they also had 4 Soldiers and a Corporal stationed on the Ranch, they were to take care of the interests & property of the Government, when the United States took possession of this Country they were there still. I don't know how much they were paid, or whether they were paid anything or not. at first the stock was in charge of the Padres, it was a Mission then the Administradores of the Mexican Government took charge of the stock, then all the stock was the property of the Government, after that the Military succeeded to the Administradores in the charge of the stock -

The Military authorities had charge of the place when the United States took possession of California - I have known Genl Vallejo to take stock off the ranch & sell it, both before & after the Americans came here, I believe that Vallejo sold all he took off, the Ranch was under the supervision of Genl Vallejo until the Americans came

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to this Country. It was recognized as being under his control even after the Americans came here —

Cross Examination

I was Mayor Domo on the Ranch of Don Salvador Vallejo which was near that of Mariano G. Vallejo, and I used to go there very often, the last time I saw the Soldiers on the Suscol Ranch was when Genl Micheltorena was there and at the time they drove him out of the Country, after Micheltorena left the Country Vallejo had Vaqueros & cattle on the Ranch —

Subscribed & Sworn to
before me this 14 March 1857.
Cutler McAllister
US Comr

Jose Ramon his + mark Mesa

UNITED STATES DISTRICT COURT,
Northern District of California.

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San Francisco, March 14 1857.

ON this day, before Cutler McAllister a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came Ignacio Pacheco a witness produced on behalf of the United States in Case No. 318, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 291 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows—his evidence being interpreted by S. Clinton Palmer a sworn interpreter

PRESENT: B. S. Brooks Atty for Claimant
N. Dist Atty

QUESTIONS BY N. Dist Atty

Ques Your name, age, residence & occupation
Ans Ignacio Pacheco, 49. San Rafael. Rancher.
I Know Mariano G. Vallejo. I have known him ever since the year 1831. Vallejo was at that time an Ensign, and I was a private soldier under his command
I Know the Suscol Rancho - the Mexican Government occupied that Rancho at the time the Americans took possession of California - I never conversed with Vallejo about his title to that Rancho -
I have never heard of his claiming the Suscol Rancho - Vallejo never occupied the Rancho he, never was there ~~duty as an officer~~ of the Government - It was never occupied by Vallejo - I don't know how long
soldiers

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after the Americans came here that the Government abandoned it.

Cross Examination

In 1846 I think was the last time I saw Soldiers at the Ranch — when the Americans took possession of the Country, there were Soldiers there when Micheltorena died. They were Dragoons

~~Subscribed & Sworn to~~ Ignacio Miramon ~~before me this~~ tes was the last officer in the immediate command of the Post, he is living some where on the Coast — At the time I was discharged in 1837 Michaltorena was already dead before —

It was Figueroa who died ~~in~~ before 1837, not Michaltorena — 1839 is the last time I saw Soldiers at the Ranch — Alvarado was Governor I think at the last time I saw Soldiers there — The last time I saw Soldiers was about the time the Americans took possession of the Country

Sworn to & Subscribed
before me March 14. 1857.

Cutler McAllister
Alcalde

Ygnº Pacheco

UNITED STATES DISTRICT COURT,
Northern District of California.

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San Francisco, March 14 1857.

ON this day, before Cutts McAllister a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came Jose. Francisco. Westgate a witness produced on behalf of the United States in Case No. 388, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 291 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows — ~~his evidence being interpreted by a sworn interpreter~~

PRESENT:
B. S. Brooks Atty for Claimants
& U.S. Dist Atty

QUESTIONS BY U.S. Dist Atty —

Ques Your, name, age & place of residence & occupation
Ans Jose. Francisco Westgate. 62, I reside in Marin County & am a Gunsmith, I have lived in this state 27 years, I am acquainted with Mr. Vallejo I married a niece of his, I have known him ever since I have been in this country, I know the Suscol Ranch, in 1834 I owned a Ranch adjoining his, he took it from me, at the time I first knew it, it belonged to the Mission of Sonoma, Genl Figueroa died in Monterey then the Californians revolted, ~~took~~ took possession of the Missions and appointed a Governor of their own, Baptiste Alvarado I think it was — after the Californians took possession of the Missions the

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Suscol was taken as public property. I was at that time a gunsmith under the command of Vallejo, & remained in that situation until the Americans took the Country – I drew a Bullock every Month & when I went to Vallejo in the Month of May 1846 to draw my Bullock, he sent me to the Suscol Ranch to get the Bullock Ignacio Miramontes was the Serjeant in command of the Suscol Ranch at the time. I didn't get the Bullock as he was not at home. I never got it –

Ques Why did Vallejo send you to the Suscol Ranch to get the Bullock – (objected to)

Ans Because it was a government Ranch, & every married man in the service of the Government who boarded out of the barracks was entitled to a whole Bullock a month unmarried men to half a Bullock each I was a married man at that time –

At the time the Americans took possession of the Country the Soldiers were stationed there & remained there a few days after when they absconded. Lt Revere of the American forces took Cattle & Horses from the Ranch, as belonging to the Government – Miramontes who was in command at the time of the Soldiers of the Suscol Ranch lives here now he lives somewhere near the Mission. Charley Brown knows him –

I never knew he had any more claim to the Ranch than as a General in the Army – I never heard of his claiming the Ranch as his own property until 1852

Subscribed & Sworn to before me this 14 March 1857.

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I Know Jose ~~Delarosa~~ Delarosa, he lives in Sonoma. I Know his reputation it is bad. from what I Know of his reputation for truth and veracity I would not believe him under oath -

I Know Salvador Vallejo, I Know his reputation for truth & veracity - I would take his word any where I never Knew any thing against his reputation for truth & veracity -

~~X Examination~~

I have resided at Sonoma ever since 1850 it is on the Sea Coast it is about 25 Miles from Sonoma - previous to that I have resided in Sonoma Petaluma & Bahea Bolenus or Bolenus Bay -

Sworn to & Subscribed
before me this 14 March 1857.
Cutler McAllister
Alcalde

Jose Jesus de Vallejo

UNITED STATES DISTRICT COURT,
Northern District of California.

(13)

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San Francisco, March 14 1857.

ON this day, before Cutler McAllister a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came William Watson a witness produced on behalf of the United States

in Case No. 318, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 291 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows — ~~his evidence being interpreted by a sworn interpreter~~

PRESENT:
B. S. Brooks Atty for Claimants
U.S. Dist Atty

QUESTIONS BY U.S. Dist Atty —

My name is William Watson. I am 37 years of age. I beside in Napa County. I have lived in this State since 1845. I am a house carpenter. I know the Sucol Ranch some little. I have known M.G. Valleja intimately since 1847. I did not know the Ranch until November or December 1846 — I have conversed with Valleja about his title in the month of June 1847. I spoke to him about purchasing from him a tract of land known as the Salsipuedes Valley or the Sucol Ranch for some Carpenter's work I was to do for him. We ~~could~~ could not trade he refused to give me a warranty deed but offered to give me a quitclaim deed with a warranty against himself &

heirs, he gave me no definite reason for refusing a warranty deed - In the Spring afterwards in 1848, I offered to purchase that tract where the Sucol ferry is now he would not sell it to me because he said there was a doubt about his title, he had purchased it from the Indians, he told me he thought the American Government would swindle him out of it, I requested of him a refunding deed & he would not give it to me, he afterwards told me there would be no difficulty as he had two Americans on his side to assist him to defend his claim before the United States, this conversation took place April 13, 1848, I opened Store that day in Napa City - He said he bought his title of the Sucol Indians, he said he traded with Capitain who was at that time head of that tribe - I made inquiries at that time about the title of certain Spaniards who were in possession of the Ranch they told me that Governor Vallejo had nothing to do with it, It was under the control of the Padres, ~~who were out~~, and that they were in charge for the Padres - The Spaniards I found in possession were Juan Salisea & Quinchs Salisea -

I Know Salvador Vallejo -

I would not ~~him~~ take his word under oath - I Know his general reputation, it is bad - I Know Jose Delarosa of Sonoma - I am some little acquainted with his general reputation - It is very bad

Wm Watkins

Sworn to & subscribed before me
this 14 March, 1857.
= Cutler McAllister
Notary

U.S. Comr

UNITED STATES DISTRICT COURT,
Northern District of California.

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San Francisco, March 14 1857

ON this day, before Cutler McAllister a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came Charles Hopper, a witness produced on behalf of the United States in Case No. 318, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 291 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows ~~— his evidence being interpreted by a sworn interpreter~~

PRESENT:
B. S. Brooks Atty for Claimant
& U.S. Dist Atty

QUESTIONS BY U.S. Dist Atty

Charles Hopper – I am about 37 years old I am a farmer – I live just 10 miles above Napa City. I have lived in this State since 1849. I am acquainted with M.G. Vallejo, I have been over the Suscol Ranch two or three times –

I Know Salvador Vallejo – I suppose I know his reputation for truth & veracity It is not very good – If it was a matter from which he would derive great advantages I would not believe him under oath –

Sworn to & subscribed before me this 14 March 1857
– Cutler McAllister
U.S. Comr

his
Charles × Hopper
mark

UNITED STATES DISTRICT COURT,
Northern District of California.

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San Francisco, March 14 1857

ON this day, before Cutler McAllister a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came I. N. Whitton a witness produced on behalf of the United States in Case No. 318, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 291 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows — ~~his evidence being interpreted by a sworn interpreter~~

PRESENT: /
B.S. Brooks, Atty for Claimants
x US Dist Atty

QUESTIONS BY US Dist Atty

I. N. Whitton. 42 years of age. I reside in Napa Valley I am a farmer —
I Know Salvador Vallejo I have known him since June 1846 — I expect I know his general reputation for truth & veracity It is bad — I would not believe him under

Subscribed ~~& sworn~~ to before me March 14, 1857 I. N. Whitton
Cutler McAllister
US Comr

District Court of the
United States Northern
District of California
No 318

four

The United States

vs

M.G. Vallejo et als

Depositions of Jose, Ramon, Maria
Ignacio Pacheco, Jose Soumeies Nicholas
Wm Watson, Charles Hopper &
I.W. Whitton Witnesses produced
on behalf of the United States.

Filed March 16 1857
W. H. Chevis
Deputy

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UNITED STATES OF AMERICA,
STATE OF CALIFORNIA.

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COUNTY OF SAN FRANCISCO.

In the Circuit Court of the United States for the Districts of California.

IN AND FOR THE NORTHERN DISTRICT.

M. G. Vallejo

vs.

The United States

The President of the United States of America,

To

Ignacio Pacheco

GREETING:

You are hereby required, That all and singular business and excuses being set aside, you appear and attend before ~~the Circuit Court of the United States for the Districts of California,~~ Fully R. Wise Esq. a Commissioner of the U.S. Court of Claims ~~to be held~~ at the Circuit Court House in the City of San Francisco, on the Twenty Eighth day of August A. D. 1857, at 2 1/2 o'clock, P. M., then and there to testify in the above stated cause now pending in said ~~Circuit~~ Court of Claims on the part of the above named Defendant. And for a failure to attend you will be deemed guilty of a contempt of Court, and liable to pay all loss and damages sustained thereby to the party aggrieved.

Witness, The Hon. ROGER B. TANEY, Chief Justice of the Supreme Court of the United States of America, this Twenty Seventh day of August in the year of our Lord one thousand eight hundred and fifty-seven and of our Independence the eighty-second.

Attest,

Geo. Pen. Johnston
Clerk,

By

~~*Dep. Clerk.*~~

U. S. Marshals Office
San Francisco Aug 27th 1857
Richard Usher to serve

I hereby specially depute
the within Subpoena

P. L. Solomon
U. S. Marshal

I served the within subpoena by copy on the
within named Isaac Pacheco personally on the 27th
day of August 1857

P. L. Solomon U. S. M.
by R. Usher
Special deputy

#318

(Original)

Circuit Court of the United States
FOR THE
Districts of California.

NORTHERN DISTRICT.

M. G. Vallejo

vs.

The United States

SUBPŒNA.

Filed this 8 day of
September 185[illegible]

Geo. Pen. Johnston Clerk.

Cutter Mapleton
Deputy.

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Senor Colonel
Dn. Dn. G.
Vallejo, Military
Commandte. from
the line of Sonoma
to Shn. Dnc.

I remit to you
the title of the
place called
Sasal, This
Govt. regretting
not to accept the
first of the offers
which you make me, because the
Supreme Govt. of the nation has
commanded that all payments
in arrear be suspended until
the 1st. of October 1841, which will
serve you as a rule towards
your debts makes, which sus-
pension was made to
extend until the relief of the
public treasury, and which I
myself had to suffer to a con-
siderable number of thousands
of dollars, while I accept the
offer of Five thousand dollars
in effects of produce, for the
reasons because of the imperious
necessity which I am under to
have those things for their
subsistence, for which purpose I

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send the schooner California,
that you may be pleased to lade
her with five hundred arrobas
of Maize, two hundred and fifty
of Frijoles, two hundred arrobas
of dried meat, and five hundred
pairs of shoes, or the materials
to make them, which I am
informed, it will not be difficult
to send, and knowing also that
it will not be very burdensome
to you. I entreat you very
earnestly, to send me two thous=
and pieces of silver in consider=
ation that the treasury of the
Department is so destitute that
since my arrival here, it has
not produced anything, by rea=
son of no vessels having entered,
besides this, the troops of my
expedition are supported from
day to day by money in hand,
being subject to a different
system of accounting, admin=
istration, and customs, from

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those of the Rancherias as you are aware in the same manner as the rest of the National army, and this service will oblige me beyond measure. I take this opportunity to offer you my considerations.

God &c.

Angeles, March 15, 1843

It is hereby agreed that the foregoing translation be filed as a correct translation of it's original.

Tully R. Brice.
acting U.S. Dist. Atty.

No. 318

N. S. Dist: Cal.
Nor: Dist: California

The United States
— vs —
M. G. Vallejo & ags.

Translation of Letter
to M. G. Vallejo.

Filed Dec: 22 1857
J. E. Haynes
Deputy

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U.S. District Court
Northern District of Cal.

The United States Appt
v
Mariano G. Vallejo
& assigns. Respt

Northern District of California } ss.
City & County of San Francisco }

Vincent Gelcich of the said City Doctor of Medicine being duly sworn deposes and says that he knows Don. Santos Berryesa and for sometime occupied the same room with him in this City during which time the said Berryesa had payment interviews with squatters on the Soscol Rancho and negociations concerning his grant by letters in this case to defeat the grant and in such interviews deponent frequently acted as interpreter between the parties. The subject of such negociations was the price to be paid for the said letters. The said Berryesa offered to certain squatters against the said grant for the sum of five hundred dollars. and the said squatters said it was impossible to raise so much but they promised to get Berryesa and see how much they could raise and the said Berryesa further said to this deponent that he Berryesa was no mortal enemy of M. G. Vallejo and would do everything in his power to injure him

Sworn to before me this
20th day of Dec 1857

V. Gelcich

F. J. Thibault
Notary Public

U. S. District Court

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M. G. Vallejo et als

vs

The United States

Affidavit of

V. Geluicha

Filed Dec 22nd 1857

Rogan Bryne

Deputy

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1 Jane

U.S. District Court
Northern District of California

The United States Appt.
v
Manuel G. Vallejo et al Respts

Northern District of California City & County of San Francisco ss. Thomas O. Larkin of said City being duly sworn deposes and says that he has resided in California for more than twenty years past and was the United States Consul at Monterey during the administration of Governor Micheltorena and up to the time of the change of government and in his official character and otherwise has corresponded with said Micheltorena very frequently - was personally and intimately acquainted with him frequently saw him write and knows his handwriting and deponent says that he has examined the original documents on file in this cause and has examined the signatures thereto and has compared the signatures of Micheltorena thereon written with various signatures of said Micheltorena to letters received by deponent from him during their correspondence and deponent says that he verily believes the said signatures of Micheltorena to be genuine. Deponent further says that he is familiar with the handwriting

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of Francisco Arce - has often seen him write, has documents now in his possession written by said Arce and to which his genuine signatures are attached. and deponent has examined the signatures of said Arce where they appear upon said original title papers and carefully compared them with those in his possession of undoubted authenticity. and deponent says that he has no doubt of the genuineness of the signatures of Arce wherever they appear on said papers. deponent further says that he knew of the grant to General Vallejo. of the Socoal at or about the date of the grant. That the transaction was well known among those who were in communication with the government. deponent further says that the government of Michelltorena was often in great distress for funds and supplies. the treasury was at times empty his army unpaid. his resources exhausted and the country in a very disturbed state. deponent knows that the golden California was in the employ of the Mexican Government. and that Capt Geo Cooper was in command of her at that time and that she went to Sonoma & Petaluma for supplies to be furnished by Gen Vallejo to the government

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and knows that she returned with them. Deponent further says that at that time Mr Little & General Vallejo & Mr Secol Rancho was well known and recognized among the leading men of the country and he never heard it questioned among the Mexican administration

Subscribed and sworn to before me this 19th day of December A D 1857.

F. D. Thibault
Notary Public

Thomas O. Larkin

No 218

U. S. Dist.-Court

M. G. Vallejo et al

vs

The United States

F. O. Larkin's

Affidavit

Filed Dec 22nd 1857

Hagan Symes

Deputy

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US District Court
Northern Dist of Califa

United States appt
v
Mariano G. Vallejo. & assignes. Respts

Northern District of California City of San Francisco ss. Manuel Castro being duly sworn deposes and says He is a native of California and has lived all his life in California or Mexico. and held various offices under the Mexican Government — In 1843. deponent was Secretary of the Prefectura of the District of Monterey and as such had frequent official communications with both Gov Michellorena and Francisco Arce has seen them both write and knows their hand writing. Deponent has examined the original documents filed in this case purporting to be signed by Michellorena. and. Arce and their names wherever they appear as signatures upon said documents are as deponent believes in their genuine hand writing Deponent resided during 1843 and 1844 in Monterey. Deponent knows the handwriting of Rafael Sanchez having frequently seen him write

no body of no letter from Gov Michel-
torena to Genl Vallejo. it is said
to be Micheltorenas handwriting. No body
of no Titulo which accompanies
it is no ones handwriting. Depo-
nent has carefully examined the
papers & all the documents
and to the best of his knowledge
and belief they are genuine
Deponent further says that he was
present no transaction at the
time it took place from commen-
cement at Monterey. He heard
before the departure of Capt
Cooper in the golden California
for the ships that General
Vallejo had purchased the Rancho
Soscol from the government and
that he was to pay for it in Ships
That voyage of Capt Cooper to Sonoma
and its object was commonly
talked of. Deponent knows that
Capt Cooper did at that time
go into golden California to Sonoma
to buy the ships and that he
did receive them and deliver
them to the government at Monterey
Deponent saw the ships at
Monterey and particularly re-
members the grain which was
deposited in the "Casa del Gobierno"

deponent frequently heard the Government officials and employees and the officers of government speak of the title of concession at the time. It was a sale of the Rancho. The government at the time stood in great need of their supplies. The troops were unpaid and discontented. The treasury always made a shameful. The income insufficient to meet the expenses. The officers of government themselves unpaid. deponent further says that Francisco Arce was liable in the sum. He last put up at a restaurant in connection with the Commercial Hotel where he made no concealment whatever of his being here - was going about the public streets. visiting this court and wherever his business called him without any restraint. He came in a public stage to give his testimony in the Rincon case and for other business of his own - remained here about a week until he had finished his business and went away in a public stage

Subscribed & sworn before me this 19th Dec 1857.
R. Woodworth
Notary Public

Manuel Castro

Us District Court

United States
appt
v
M. G. Vallejo & amigos

Depn of Manuel Castro

Filed Decr 22d 1857
J. Hagan Grymes
Deputy

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Seven

U.S. District Court
Northern District of Calif.

The United States. Appt
v
Manuel G. Vallejo. et. Reps.

City of San Francisco. Northern District of California.
Thomas. O. Larkin being duly sworn deposes and says that since making his affidavit ~~he has examined~~ of the 19th instant he has examined the original memorandum or "razon" in the archives containing the substance of the letter from. Micheltorena to Genl Vallejo. The original whereof is filed in this case and has compared said memorandum with authentic documents in his possession in the handwriting of Francisco Arce and deponent says that he has no hesitation in saying that said memorandum is entirely in the handwriting of the said Francisco Arce

Thomas O. Larkin

Sworn to before me this
21st day of Dec 1857
P. K. Wood side
Notary Public

U.S. District Court
Northn Dist. of California

United States Appt

v

Vallejo & Arroyo Rapp

2o Deposition of T. O. Larkin

Filed Dec 2 2 1857

Edgar Gregory
Deputy

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Brooks

eight.

United States
vs
M. G. Vallejo

No 291
In Dist Court for the
Northern Dist of
California.

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Sir

Please take
Notice that a Motion will be made before
the Hon Dist Court for the Northern Dist
of California at the Court room in
the City of San Francisco on Wednesday
the 23 day of Dec A D 1857 at 11 o'clk
of that day or as soon thereafter as
Counsel can be heard for an order
to open said cause for the purpose of
receiving additional testimony in behalf
of the United States & that such Motion
will be founded on the affidavits of
Jose L. Berreyesa & C M Chamberlain.
Copies of which are herewith served
Dated San Francisco
Dec 18th 1857

Yrs &c
P. Soulé
U. S. Atty.

To B. S. Brooks Esq
Atty for Claimants.

I hereby admit service of Copies of the within affidavits
and Notice of Motion this 18th day of Dec A D 1857

B. Brooks
Atty for Claimants

U. S. District Court - Northern District of California

M. G. Vallejo

vs

The United States

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State of California
County of San Francisco ss:

Jose Berryesa being duly sworn doth depose and say that he resides at Martinez, Contra Costa County California - that he knows Francisco Arce formerly and now a resident of said State and is well acquainted with his hand-writing - that he has often seen him write and sign his name to papers and documents - that he has closely examined the paper purporting to be a grant on file in this Cause, and on which the said M. G. Vallejo predicates a claim to a Rancho known as the Suscol Rancho in this State, and the name of said Arce subscribed thereto and that he verily believes that the same is not the hand-writing of the said Arce nor his signature, and further says that he believes various credible persons of character and veracity can be produced who are acquainted with the hand writing of the said Arce to prove that said signature is not genuine - and further says not.

Subscribed & sworn to before me
this 16th day of December 1857.

J. Berryesa

L. Woodside
Notary Public

U. S. District Court

Northern District of California

M. G. Vallejo

vs

The United States

Affdt of Jose Berryessa.

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United States } In U.S. Dist Court for
vs } the Northern Dist of the
M. G. Vallejo } State of California.

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City and County of San Francisco } ss

C. W. Chamberlain ~~being~~ of the City and County of San Francisco being sworn saith that he has been employed by a large number over twenty or twenty five persons who reside & have taken up claims on the ranch known as the Suscol Ranch in the state of California to procure a rejection of the claim or title to said ranch the same being supposed by said persons and many others residing thereon to be illegal and fraudulent. That a trial of said claim has been had before this Hon Court but no decision rendered the same being held under advisement That since said trial material and important evidence has come to the knowledge of said deponent by and through the information of certain persons. which in the opinion of this deponent if introduced would affect and invalidate said claim. That about four weeks since this deponent was credibly

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informed that Francisco Arce
at the time of the making of the grant upon
which said claim is predicated was the private
secretary of the then Governor Micheltorena,
that his the said Arce's signature to the said
grant was not genuine that he never subscr
ibed his name thereto but that the same
was a forgery, and further that said signature
bore no exact resemblance to his the said
Arce's signature or handwriting That
a great number of persons could
be introduced if necessary who were fam
iliar with his the said Arce's signature.
who would swear that said signature in
no material respect resembles the hand
writing of said Arce, And besides that
other material testimony could be adduced
confirmatory & corroborative of the
fact that said signature is a forgery
This deponent says that confiding in
such information he took means some
two weeks since to send to Monterey
where said Arce resides & then was,
requesting him to come to San Francisco
to the end that the affidavit of said
Arce might be taken and the affidavits
of such other persons as might be obtained
on which a Motion might be made
to this Hon Court, to permit the

hearing of further testimony against
said claim before the occasion thereof
That said Arce came to San Francisco
within a few days & stopped as deponent
was informed at the California Hotel.
That as soon as deponent was advised
that said Arce was at said Hotel which
was a day or so thereafter he deponent
sent persons to request an interview with
him. That this deponent sent again and
again for two or three successive days.
When to his astonishment deponent was
informed that said Arce was secreted &
could not be seen. That after several
days of ineffectual search for said
Arce and not being able to find him
deponent was informed that said Arce had
left for his home at or near Monterey
This deponent further says that when
said Arce arrived in San Francisco
many persons who are interested in the
Confirmation of said claim were then
stopping at said Hotel & that to
the best of his information and
belief such persons or some of them.
Said said Arce to secrete himself and
leave town. That some or all of said
parties have paid other parties who were
active in procuring the testimony

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of said Area and such others as might be necessary that said claim to become inactive and silent, and further that this deponent knows of no mode by which he can compel the said Area to make our affidavit for the purpose aforesaid, but that he truly and verily believes that if this cause be opened for the reception of further proof, and that said Area be compelled by process of subpoena to give his evidence it will be made to appear that said signature is not genuine.

Sworn and subscribed
before me this 18th day
of Dec A D 1857

C. M. Chamberlain

Wm L. Higgins
Notary Public

No 291

U. S. District Court

Northern Dist. of California

The United States

vs

M. & Valleja

Affts Notice of Motion

Filed Dec 23 1857

J. W. Parkinson

Deputy.

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Denied

U.S. District Court
Northern District of Calfa

The United States. Appt
v
M. G. Vallejo. & Assignees. Respt

City & County of San Francisco } ss.
Northern District of Calfa
John B. Frisbie being duly sworn deposes and says that after hearing of the allegations made and circulated by common rumor about the Rancho Sarcel that Judge Hoffman had made certain statements to Major Hunley in respect to his opinion about the title to his rancho and the course he intended to pursue in regard to this rancho. deponent had an interview with Major Hunley and asked him what was the foundation for the said reports. and Major Hunley told this deponent that the said statements were entirely without foundation that he Hunley had never made any such statements and could not have done so because Major Hoffman had never made any such remarks to him nor connected with the subject nor had he Hunley had been given any authority for such statements but on the contrary he had advised his brother who resides on the rancho to purchase under the grant to M G Vallejo. telling him that he Major Hunley was in Monterey when M. G. Vallejo made his petition to Gov Micheltorena and he had no doubt of the genuineness of the title. Deponent further says that Major Hunley is absent from the city and therefore deponent cannot procure his affidavit and deponent verily believes that the name of one of the Judges of this court has been most unwarrantably used by those who are endeavoring to stir up trouble upon the rancho.

Deponent further says that this case was along time pending in the land commission and a great deal of documentary and oral

testimony was taken and the case was diligently opposed by the law agents of the United States. and was not passed upon by the commission without due consideration because the case presented some legal points which distinguished it from the mass of colonization grants. but no question was made in any respect as to the boundaries of the grant. It was one of the Cahuenga claims being 318 on the docket. The transcript was filed Nov 7 1833 and the case was at issue and prepared to be submitted to the court Feb 16. 1836. From that time no steps was taken in the case for more than a year But on 9 March 1837. when the case was called on the docket upon the representation of Wolfskill that he could produce some material testimony against the grant. one week was allowed to him to examine his witness and the claimants counsel agreed to attend at any time upon reasonable notice. His partner Dana Watson did examine several witnesses - but so irrelevant and useless was their testimony that Wolfskill refused to sum up the case & file a brief declaring that the Squatters had deceived him as to what this case was. On the 16th March the claimants counsel again proposed to submit the case and so entered it upon the court and the District Attorney waived the 17th June. The case having been submitted in the manner with both sides and on said 17th June the District Attorney filed his brief. to which Claimants counsel filed a written argument in reply. Since that time the inhabitants of the Rancho have remained quiet - there being very

few squatters upon his ranch until lately when Chamberlain Goat and some others residents of San Francisco came up & sent their emissaries into the neighborhood to induce people to go and squat upon the land and to sign an agreement to give them a certain share of the land, in case they should succeed in defeating the grant. and making various representations in regard to the validity of the grant and its authenticity. Wm B Ide

Sworn to before me this
23d day of Dec 1857
John Benson
Notary Public

U.S. District Court
Northern Dist of Calif

The United States App

v

M. G. Vallejo. Lapps

Aff of J. B. Frisbie

Filed Decr 23d 1857
Hugh [illegible]
Deputy

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Brooks

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U.S. District Court
Northern District of Calif.

The United States. Appts
v
Mariano G. Vallejo.
and assigns. Respt.

City & San Francisco ss. Northern District of Calif.
John Forney being duly sworn deposes and says that he has resided on the Socol Ranch about four years. That the said Ranch has until the late proceedings of Chamberlain and his associates been almost perfectly squatter. That by investigations and persuasions of said Chamberlain & Co. the said Ranch has been swarmed with squatters who have disturbed the farmers in their possessions broken down their fences, prevented the erection of others, taken possession of lands enclosed and occupied and put a stop to many contemplated improvements deponent was informed by one Gillespie one of the active of the squatter movement that Judge Hoffman had stated to some person that it was his opinion there was something wrong about the Socol Grant and that he would keep it until it was properly sifted out. Deponent knows of efforts made among the squatters to raise a fund of money for the purpose of opposing the claim. Deponent the agreement between the squatters and Chamberlain & Co. which is in writing was wholly contingent upon a policy which has been a pressing demand among the squatters for a sum of ready money for some purpose connected with the opposition deponent further says that he has heard the appointment of Berry Shurgi in relation to the matter and fully concurs with the same so far as the matters are within

his knowledge and particularly with respect to the history of the title, the improvements upon the Ranch and their value

John Tormey

Subscribed & Sworn to
before me this 22d day of
December A.D. 1887.
John Benson
Notary Public

U.S. District Court

M. G. Wallace et al
vs
The United States

Affidavit of
John Tormey
Filed Dec 23 1887
Wm Lyons
Deputy

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2 Claims

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U.S. District Court
Northern Dist of Cala }

The United States. apps
v
Mariano G. Vallejo & others Respts } 317

City & County of San Francisco. Northern District of California ss. Edward A. Lawrence being duly sworn says. that he is an attorney and counsellor of this court. That he knows Francisco Arce. Deponent wrote to him to come up to San Francisco to give his testimony in the case of Romero in this court. He promised to come on a certain day but did not come on that day but did come on the 6th in the stage. Deponent saw him when he arrived. During the week following he came frequently to the office of deponent several times. Stated at the Tehama house. went to the Archives to examine papers. testified before U.S. Comr Greenes in the U.S. Dist Clks Office being some 6 hours under examination. During a part of which time the Judge of this court was present and many others. remained in this city two or three days after. He was here openly. there was no attempt at concealment. He intended to have left on Wednesday. then waited to give his testimony until Friday - and then stayed some days after. He stayed to give his testimony some days later than he intended to originally and was all day giving his testimony

Sworn to before me this
23d day of Dec 1857 }

John Benson
Notary Public

E. A. Lawrence

U.S. District Court
Northern Dist of Calif

The United States Respts

v

M. G. Vallejo & al Claimants
Respts -

Deposition of Lawrence

Filed Dec 23 1857
J. Ferguson Deputy

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Findlay Brown

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U.S. District Court
Northern District of Calif.

The United States appl
v
Mariano G. Vallejo Rec
and Assigns Respts

City of San Francisco. Northern District of California ss.
Henry Shoup being duly sworn deposes and says. That he has resided upon the Socorro Rancho for nearly four years past and is well acquainted therewith. That until lately the said Rancho has been comparatively free from squatters, but about two months since Chamberlain and that the lawyers of the city commenced to stir up the people in the neighborhood of said rancho and to hold meetings and speak against the title of the rancho: and at such meetings the alleged Invalidity of Judge Hoffman to the title was freely made use of. and it was publicly asserted at said meetings by that Judge Hoffman had been to Mayor Kinsley and had said to him that he believed there was something wrong about the grant and that he had it in his mind and he intended to keep it there twenty years until he was satisfied if it was twenty years. Deponent further saith that these parties induced people to come and squat upon the rancho declaring it to be public land: under an agreement with them to give the said Chamberlain & Co. one fourth or some other portion of such ones possession in case they succeeded in defeating the claim. & in lieu thereof a certain sum in money. the whole being contingent. That in consequence of these proceedings a horde of people have come upon the rancho. broken down the fences of many farmers holding under this title - threatening

to destroy the crops. preventing others from
enclosing fences & planting in crops. dis-
turbing and disquieting them who have
been for years in quiet possession of their
lands cultivating and improving them
Deponent further says that the whole title
to said lands has passed out of the original
grantee and is now divided among many
persons. Upon one side of the ranch
is the town of Vallejo. and where inhabitants
not only have their homelots under this
title but they are surrounding the town
and running back into the ranch many
small parcels of land in which the people
of Vallejo have invested their small savings
On another part of the Rancho lands the
City of Benicia. the Pacific Mail Steamship
Company owns. and the head quarters of
the Pacific division of United States troops
its barracks &c. On another part in the
village of Sacob, Thompsons mills. believed
to be the largest in the State. And the remainder
of the Rancho is divided among various
parties bought purchased and cut up
into farms stock ranches &c with large
and valuable improvements. The title
under which they purchased was recorded
and which is sought to be confirmed herein
was recorded in the County Recorders Office
of Solano - in Dec 1850. as appears by the
certificate on the back of the grant. and was
duly submitted to the examination and
enquiry of every one. Many officers of the
United States were interested in forming
the City of Benicia. The government duly
approved of the grant by purchasing under it
after an examination of the title for their
own mills and head quarters - The State appro

by locating the capital of the State upon it. The Pacific Rail Company aided by the Government purchased it and although the case has remained open for the introduction of testimony for years no one Solitary intruder has ever appeared to question the genuiness of the title papers nor has any thing even said against their authenticity until now.

Deponent has lately heard it talked about generally on the Ranch that it was necessary for the squatters to raise a considerable sum of money with which they could buy off. That it was necessary to have certain depositions - and that they could not get them without money. This has been during the week or fortnight past.

Deponent further says that there has been expended upon the Ranch over three millions of dollars by those holding under the grant to W.G. Valle.

Berry Shows

Sworn to before me this
22 Dec 1857

John Benson
Notary Public

U.S. District Court
Northn Dist of Cala

The United States
appellant

v

Mariano G. Vallejo
& assignees & Repts

Depn of Berry Shingle

Filed Nov 23 1857
J. Edgar Grymes
deputy

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Brooks

Thirteen

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S.r Coronel D.n
M.no G. Vallejo
Comand.te militar
de la linea de
Sonoma á Sac.to

Remito a V.S. el título del parage nombrado
Soscal, sintiendo este Gob.no no aceptar la
primera de las ofertas que V.S. me hace por
que el Supremo Gob.no de la Nacion

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tiene mandado se suspenda a todo pago atrasado
hasta 1º de Octubre de 1841. lo que la servirá
de regla para con sus subordinados, cuya suspen-
cion fue estendida hasta el desahogo
de la hacienda publica, y la que aun yo
tube que sufrir una cantidad considerable
de miles de pesos, pero si, admito la oferta
de las cinco mil pesos en efectos de aguar-
mas pª las Tropas por la imperiosa ne-
cesidad que tenga de ellos para mante
nerlas á cuya efecto mando la Goleta Ca
lifornia pª que se sirva cargarla con
quinientas anegas de maiz, docientas
cincuenta de Frijol, docientas Arrobas
de Carne Seca, y quinientos pares de
Zapatos ó las materiales para hacerlas
que me informan no serle difícil
remitir-me y conociendo tambien que no
le será á V.S. muy gravoso; Suplica
encarecidam.te me mande dos mil pª
en plata, en consideracion á hallarse
el Erario del Departam.to tan escaso que
desde mi llegada á el no ha producido sin
no haber entrada de buques, amas de esto
la tropa de mi espedicion se socorre y
diariam.te con dinero en mano, por estar
sugeta á diversas metodos de contabilidad,
administracion y costumbre que las Presi-
diales como V.S. sabe del modo que el
resto del Ejercito nacional, y cuya ser

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vicia agradecer sobre manera.= Esto ar
me proporciona de ofrecer a VS. mis con
sideraciones = Dios ℓ Aug.s Mex.o 15. de 1843

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Office of the Surveyor General,

Of the United States, for California.

I, **J. W. MANDEVILLE,** *Surveyor General of the United States for the State of California, and as such, having in my office, and in my charge and custody, a portion of the* **Archives** *of the former* **Spanish** *and* **Mexican** *Territory or Department of* **Upper California,** *as also the papers of the late Board of Commissioners "to ascertain and settle private Land Claims in California;" by virtue of the power vested in me by law,* **Do Hereby Certify** *that the 3 preceding, and hereunto annexed page of tracing paper numbered from one to 3 inclusive, exhibit a true and accurate copy of a letter as recorded in a copy book of Official Correspondence for the year 1843, as the Same is found in the Archives belonging to the former government of California, now in my Office and under my Charge.*

In Testimony Whereof, *I have hereunto signed my name officially and caused my Seal of Office to be affixed, at the City of San Francisco, this 21st day of December 1857.*

J. W. Mandeville **U. S. Surveyor General for California.**

Extract from the 2nd Section of the Act of Congress "providing for the Survey of Public Lands in California, and for other purposes."
[Approved, March 3d, 1855.]

"The Secretary of the Interior is hereby authorized to cause an official Seal to be prepared for the Office of the said Surveyor General, (California) and any copy or extract from the plats, field notes and other records and documents on file in his office, when attested as such by the said Seal and the signature of the Surveyor General, shall, in all judicial matters, have the same force and effect as the original."

Extract from an Act of the Legislature of the State of California, "concerning certified copies of certain Instruments in Writing."
[Approved, April 29th, 1857.]

"SEC. 1. Copies of all papers, lately belonging to the United States Board of Commissioners for the settlement of private land claims in California, and on file in the office of the Surveyor General of the United States for the State of California, and all copies of documents and papers belonging to said Surveyor's office, which copies shall have been duly certified to be true copies by said Surveyor, shall be received and read in evidence, in the same manner, and with like effect as the originals."

No 518

U. S. Dist. Court

Exhibit A.

M. G. Vallejo et als

vs

The United States

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Traced Copy of letter
to M. G. Vallejo,

Filed Dec. 23rd 1857

Rogr Sydney
Deputy

Translation to Record
on P. 451 &

Exhibit A.

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At a Stated Term of the District Court of the UNITED STATES OF AMERICA, for the Northern District of California, held at the Court Room in the City of San Francisco, on Wednesday the 23d day of December in the year of our Lord one thousand eight hundred and fifty-seven

Present:

The Honorable OGDEN HOFFMAN, *District Judge.*

The United States, —vs— R. G. Vallejo & Assigns	D. C. 318. L. C. 291. "Suscol".

The motion to reopen this case for further evidence came on this day to be heard and was argued by counsel, And thereupon, in consideration thereof, the Court, being of opinion that the affidavits produced in support of said Motion were insufficient and that no sufficient showing had been made to reopen said cause, doth adjudge, order and decree that the said Motion be and the same is hereby denied.

Ogden Hoffman
U. S. Dist Judge

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United States District Court, Northern
District of California.

The United States.

vs.

M. G. Vallejo.
& assignees.

Order denying motion to re-open cause.

Filed December 23rd 1857

John A. Monroe CLERK.

By [illegible] DEPUTY.

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~~[illegible]~~

[illegible]

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At a Stated Term of the District Court of the UNITED STATES OF AMERICA, for the Northern District of California, held at the Court Room in the City of San Francisco, on Tuesday the fifth day of January in the year of our Lord one thousand eight hundred and fifty-eight

Present:

The Honorable OGDEN HOFFMAN, *District Judge.*

Mariano G. Vallejo et al
Respondents
v
The United States
Appellants

L. C. N° 291
D C N° 318.

upon reading and filing the affidavit of B. S. Brooks and notice of motion and due proof of service thereof upon the District Attorney of the United States and it appearing to the court that a certain document has been discovered in the archives of the former government whose existence was unknown to the claimants or their counsel until after the submission of this cause and which is material evidence in and forms part of the archives of the former government as appears from the affidavit of Manuel Castro: on motion of W. Williams of counsel for the claimants it is ordered that a true copy of the said document from the original in the Mexican generals office duly certified being the record of the original letter from Gov Micheltorena which is already in evidence. be the same

is recorded in the book of Compendiums of the Government. and likewise the deposition of Manuel Carlo filed herein on the 22d day of December 1857, referring to the same document to be filed and received in evidence in the cause with the like effect as if they had been introduced and received in evidence prior to the Submission of the cause.

Enter the above order

Ogden Hoffman
Dist Judge

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United States District Court, Northern District of California.

M. G. Vallejo et al
Respondents
vs.
The United States
Appellants

Order admitting Documents offered from Archives &c in evidence

Filed January 5th 1858
John A. Brenham
Clerk.
W. H. T. Clunes
Deputy.

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Case

U.S. District Court
North. Dist. of California }

The United States Applt
v
Mariano G. Vallejo & others Resp }

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Northern District of Cal. City & County of San Francisco ss.

Benjamin S. Brooks being duly affirmed saith that he is the attorney for the claimants - that prior to the submission of this case he made diligent search for documentary testimony existing in the archives but without success. That a few days since J. B. Williams Esqr one of the attorneys of this court informed Capt Frisbie one of the claimants that he had accidentally discovered in the archives a copy or record of the letter of Gov. Micheltorena to Castillero the original whereof is already in evidence. Deponent immediately procured a traced copy and the same is now on file in this cause in the office of the clerk of this court and he verily believes that the same is material testimony for the claimants and being record evidence ought to be received in evidence without prejudice to the submission of the cause heretofore made

Sworn to before me this
4th day of ~~December~~ January 1859 }
Jno. A. Monroe
U.S. Commissr.

B. S. Brooks

Sir:

Please to take notice that upon the

affidavit of which the foregoing is a copy I shall move this honorable court on Monday Jany. 4th 1858 at the opening of the court on that day or as soon thereafter as counsel can be heard there that the traced copy of a letter from Gov Micheltorena to G. Vallejo [illegible] in this cause be considered in evidence without prejudice to the submission of the case

Yours

J. Brooks
atty for Clt

To
Col. Della Torre
U.S. Dist atty

Dec 30th 1857

U.S. District Court
Northern Dist Califa

United States appt
v.
[illegible] Vallejo [illegible]

App. Notice of motion

Brooks

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I admit service of a notice of which the within is a copy and a copy of the annexed affidavit
Dec 30th 1857
P. Della Torre
U. S. Atty

Filed Jany 5, 1858
W. H. Chevers
Dep. Clk

318.

N. S. Dist: Courts;
Nor: Dist: California

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The United States
vs
M. J. Valleja and others.

No. 318, Dist: Courts.
Land Com: No. 291.
"Suscol."

The claim in this case was confirmed by the Board of Land Commissioners. On appeal to this Court it was submitted for review some time previous to the departure of the District Judge and it becomes my duty to dispose of it. The documentary title is as follows

1. An official communication from Michel-torena then Governor dated March 15. 1845 in which he rejects a proposition made by the claimant that the Government should grant Suscol (the land in dispute) in consideration of services rendered and payment therefor, but accepts and the proposition of $5109 and directs $2000 be sent in silver and supplies to the amount of $3000 be delivered on board of Schooner California.

2. A grant of same date (15. March 1843) to the petitioner signed by himself as Governor and San Francisco

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Acee Secretary ad interim. ~~The on~~
~~the~~ On the face of this grant the Gov-
ernor professes to make it by virtue
of the powers vested in him and to
grant to him the petitioner the owner-
ship of it subject to the approval of
the Assembly. The quantity of the land
granted is not stated; it is designated as "the place
known by the name of Suscol." It is
described as bounded on the North
by the lands called Tulucay and
Entsum and South by the Straits
of Carquinez. This grant is made
subject to the condition that the
petitioner shall apply for the re-
validation by the Government of the
present title on stamped paper,
presenting also a map, and also
other conditions among which one
is, that the petitioner shall build a
house within one year.
2. There follows a title on stamped
paper dated June 19, 1844 dated
at Monterey signed by Governor
Micheltorena and attested by
Acee as Secretary of State ad interim
which describes the land as bounded
by lands called Tulucay and Sus-
North

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sin and on the East and South by the County of Cuyamas Mare Island and the Estero de Napa. This grant states that the petitioner had requested the purchase of the place named and that Five thousand had been received by the Government to its satisfaction. It recites that using the powers vested in him by the Supreme Government of the Mexican Nation he has sold to the petitioner the aforesaid land of Rancal for the sum of Five thousand dollars and the receipt of which by the Government he acknowledges, and declares the petitioner or ones to occupy and possess the land without restriction.

3. Then comes the record of approval by the Assembly on stamped paper dated at Los Angeles Sept. 26. 1845 naming with foregoing titles. This document was received in evidence by the Board of Land Commissioners, is included in the Transcript of the record and commented in the brief of the United States Attorney U.S. Botts who states, that (see P. 4)

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that the original is not in the hand-
writ and the signatures have
not been proved. Such proof to
be the fact and therefore to render
the appeal from the documen-
tary evidence.

As to the genuiness of the tax grant,
it seems to be admitted. The Di-
rector attorney States that the signatures of Michelena
and Arce were proved by Pablo de
la Guerra. He further admits that
"no testimony has been introduced
in impeaching the genuiness of the
title papers."

4. The fourth document of title is an
original communication dated
official with same date of the first
of March 11. 1843.
of alone grants is an official com-
munication from Governor Michel-
torena to the petitioner in which he
states he had sent a title to the
peace called Suscol. It expresses
the regret of the Government that
it cannot accept the first offer
which the petitioner offers and
which had been made, because
the Supreme Government had or-
dered all back pay suspended
and back pay which became due

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before a certain date named in which suspension should continue until the public Treasury should be relieved from embarrassment. It further states, the suspension necessary which he declared incident to maintain his soldiers, for which purpose he sent the Schooner Cubanita and requests the petitioner to provide her with provisions to certain amounts specified and 500 pair of shoes or materials for making them. The above official communication sent with the first named letter to the petitioner is ~~taken~~ a certified copy produced from the copy of the Book of official communications in the Surveyor General's office between the Mexican functionaries for the year 1843. It is also referred to in an official letter from Governor Micheltorena to the Commissary José Arrego see archive Expediente in the case of Limantour U S. A similar communication refers to John B. Cooper as Captain of the Schooner Cubanita, Ibid. 14 Setting aside the second grant of

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19 June 1844 the official communication of Governor Micheltorena accompanying the title of 1 March 1843 shows the grant to have been a sale. In fact the District Attorney treats the whole transaction as one, and that is the main ground on which he resists the validity of this claim. x

Independently of the acknowledgement of the receipt of the consideration money of $500 by the Governor the testimony of John B. Cooper confirms as far as it goes the payment of that money to the Government. This witness states that in the year 1843 or 1844 (it is evident from the facts stated subsequently by the witness [it was in 1843]) "I took some supplies in the Schooner (California) from San Pedro to Petaluma for Governor Micheltorena and by his direction. The supplies consisted of wheat, corn, beans, Peas, blankets, tanned leather and shoes. Does not recollect their value. The vessel carried about eighty five tons and was loaded full. M G Vallejo ~~supplied~~ furnished

x If the Governor had the power to effect a sale the recitals in the grant that it was made under the colonization laws although it could not have been made under them does not necessarily show it was

mished the supplies with which the vessel was loaded. The witness deposes that he saw Michelorena at Los Angeles before he went after the supplies, and was told by him and Vallejo (the petitioner had offered to buy from him the tract of land called Cucat and "he sent me after the supplies which I understood from him were to go in payment of that land. The supplies were furnished before Michelorena came up to Monterey and the same summer he came here." The only mistake which appears in the testimony of this witness is in the amount he thinks Michelorena took from the petitioner had agreed to give.

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The genuiness of the two grants is proved by the testimony, the district attorney admits no testimony has been produced to impeach them. The testimony has been on file since the decree was rendered by the board of commissioners in 1855 and not a single witness has been introduced to impeach it except the single

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evidence of Salomon Vallejo.
The next question is as to the possession of the premises. Some conflict has arisen out of the fact that they had been in possession of the military Government at the time when the petitioner was military Commandante. That the possession pursued to the grant, that he must have been in possession of at least a part of the land, and built a house upon it prior to the grant of 1843. It is important to examine the testimony in relation to possession minutely, as it is a circumstance calculated to shew the bona fides of the transaction sustained as it is by the admitted genuineness of the two grants and the payment of the money consideration.
Juanez a witness deposes, he has known the Suscol Ranch for nearly 20 years. Has known it in the possession of Vallejo (the petitioner) for nearly 24 years, who occupied it with Cattle and horses. He has had 12000 head of Cattle and from 8 to 9 hundred head of horses. He cultivated a considerable portion of it. How much I cannot tell. He built 4 or 5 grain-

tals of grain. I lived 20 years on the adjoining ranch.

Pena another witness, swears, he has known the Rancho for 12 years, during the whole time have known it in the possession of M. G. Vallejo (the petitioner) who had a house built upon it, & cattle amounting to some fine thousand, horses, and some cultivation.

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Vaca states, when he came first acquainted with the rancho in 1837 it was then occupied by Gen M. G. Vallejo (the petitioner) who had a house built upon it, upwards of 3000 cattle, ~~and many horses~~, and some horses, a little cultivation, and has occupied it down to this time (1853)

** Salvador Vallejo. His witness is the brother of the petitioner. His testimony was attempted to be impeached to which reference will be made. He strongly confirms the testimony of the three preceding witnesses.

X Vaca ~~& other witnesses swear~~ that when

The testimony of the three witnesses

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is refered to by the District Attorney and the objection Sully made is that no one of them nor any other witness proves that a house was built within one year from the grant of 1843 and that the testimony was not sufficient to prove the inhabitancy of the grantee. The Board of Commissioners in their opinion say of the testimony "The proof of occupancy and cultivation required by the laws of Colonization is beyond doubt and abundant". It certainly proves possession by the grantee. The fact that he had not a house put on the grant and did not build a second house under the circumstances of this case cannot operate with us to cut a forfeiture of possession under the grant. The possession of the land and the cultivation of a portion of it under the grant was a sufficient occupation.

To dispose the foregoing testimony some objections have been taken pending the appeal of this case. That of Jose Ramon Presa states that the possession of the rancho was in the Mexican Government in 1846 and he says, the Indians were then

11.

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when the United States took posses-
sion of this country. On his examina-
tion he swears the last time he saw
the soldiers on this rancho Michel-
torena Governor was there. This must
be incorrect for it is an historical fact
that Micheltorena was expelled
from the country in the early part of
1845. It appears by the official corres-
pondence that ~~Micheltorena~~ the petitioner was
Military ~~Gov~~ Commander in 1843
and it is historically true that he
continued in that capacity until
1847. The civil war which had been
pending in California terminated
by the abdication of ~~Vallejo~~ Micheltorena on 22
Feby 1845 and in 1846 this country
was invaded by a foreign country and
the simple fact sworn to by this witness,
~~when~~ that soldiers were on the ranch at
the time ~~he does~~ he does, Vallejo being com-
mander, cannot outweigh the direct evidence given
the witnesses for petitioner.
In the latter part of his deposition
he qualifies his testimony and
says "I have known Gen. Vallejo
to take stock off the ranch and
sell it both before and after the
Americans came here. I believe

that sold ~~all the stock~~ all the stock he took off. The ranch was under the control of Gen Vallejo until the americans came to the country, it was recognized as being under his control and the deponent concludes that "after Micheltorena left the country Vallejo had vaqueros and cattle on the ranch."

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Pacheco a witness for the Government confirms the testimony of immediately preceding witness. In a subsequent part of his deposition to prove occupation by the Mexican Government he states that the last time he saw Suñol on the ranch it was in 1839. Alvarado was Governor at the time he states, and such was the fact. If the year be 1839 he the exact date, it cannot be the map of the Fact of Mexican possession in 1843 and subsequently.

Westgate is another witness for the Government and speaks to the Mexican possession of the ranch from the fact ~~and~~ that Suñol was there and he means negatively "he never knew Vallejo had any claim to the

Ranch than as General in the army and never heard of his claiming as his own property until 1852.

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Watson is the last witness on the Government on this point which has been taken pending the appeal. This witness knew the ranch in 1846 - negotiated for the purchase of a part of Pena Valley (the claimants) in 1847 which was broken off because Bates refused to give a warranty deed, but offered to give a quit claim deed with a warranty by himself and heirs. In 1848 another attempt was made by witness to purchase another portion of the Ranch from claimant but failed for the same reason for which the negotiation in the previous year was not consummated.

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~~Now~~ The depositions ~~have~~ were taken in 1857. They cannot be deemed to outweigh the direct and positive testimony of Juarez, Baca, and Pena whose depositions were taken in 1853 since which they have been on file in the office of the Land Commissioners and of this Court. No attempt to impeach the credibility

of those three witnesses during a series of years which has elapsed since an attempt was made to impeach the credit of Salvador Valle jo. Two witnesses produced by the Government swear they would not believe him on his oath. The third (Brotes) witness produced by the same party swears "he knows Salvador Valle jo and knows his reputation for truth and veracity. "Would take his word anywhere" The other witnesses stand unimpeached, and it is unnecessary to rely on the testimony of Salvador Valle jo.

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This case then is to be considered as one in which the title papers are admitted to be genuine, the payment of a money consideration proved, and the possession of the claimant as was ordinarily taken under the laws and usages of Mexico established.

The only grounds taken by the Government on which the validity of this claim is resisted are.

1. That no witness proves that a house was built within one year from date of the grant of 1843.

That a house was built upon the land

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prior to the date of either grant by the claimant is clearly proved. That a second house was not built (a subsequent condition) especially & in the case of an absolute sale cannot not authorize a Court of Equity to impeach any interest which has become vested in the claimant.

2. The second ground is, that the grant of 1846 is invalid because it is without ~~consideration~~ restriction and for a consideration of $800 in money.

3. Because the Governor has exceeded his power in making a grant for the excess of 11 leagues.

The two last objections which urge the grant to be void because it was a sale for a money consideration and because it exceeds in quantity 11 leagues, will be considered together.

These objections ~~two last~~ apply to the second grant of 1846 which purports to be only a conditional or absolute sale.

This grant ~~& the~~ cannot be deemed ~~a~~ in the language of the Supreme Court U S in the Cambuston case "a grant

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(29 How 54) "a pure donation, without pecuniary consideration, or meritorious services rendered to the Government." Nor does it purport to be issued under the Mexican Colonization Law of 1824 or the Regulations of 1828. It is treated ~~as such~~ instead, by the Government attorney for what it really is, an unrestricted sale for ~~money con-~~ a pecuniary consideration. Had it been a pure donation made professedly under the laws of Mexico professing to have been ~~de~~ issued by virtue of those laws and in the pursuance of the terms and provisions prescribed by them, proof of a compliance ~~of~~ with the restrictions by the Governor would not have been afforded by the recitals in the grant of his having done so especially if there had been doubt of the bona fides of the Grant. This is the extent to which the Court went in the Cambuston case. ~~Hale~~

~~Their decision in that case did not exclude the application of the rule which is acknowledged in relation to a grant made by an officer under special powers ~~to~~ who had independently of ~~the coloniz-~~ those powers had a right to a grant ~~for purchase~~ ~~zation laws~~ to make ~~the same~~ -~~

foreign to those, ~~nations on certain terms and conditions specially prescribed~~. It does not apply ~~apply~~ to a bona fide sale made to supply the necessary wants of the government and applied to the removal of them. If so intended its practical effect would be in the present and all analogous cases to nullify the application of the "principles of Equity" which are made one of the rules of decision ~~made~~ by the act of Congress ~~as of the rules of decision~~ for this Court in the exercise of the jurisdiction conferred on it, ~~on the Court~~. Nothing was said by the Supreme Court to justify such conclusion. In that case they use language which indicate that if the grant had ~~been~~ not ~~was not~~ been a mere donation, had been ~~made~~ free from suspicion, for a meritorious services rendered to the government or a pecuniary consideration, the claimant would have stood on a different footing. They say, (20 How. 24) "In the examination of this case, we have found it very difficult to resist the a suspicion as to the bona fides of the grant. It is a pure donation without

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pecuniary consideration & mentorious
services rendered to the Mexican Go-
vernment."

In the case of Treemant vs U.S. C.J. Taney
says, "And the grant was not merely
to carry out the colonization policy of
the Government but in the considera-
tion of the public and patriotic servi-
ces of the grantee. This inducement
is carefully set out in the title papers,
And although this cannot be regar-
ded as a money consideration mak-
ing the transaction a purchase from
the Government, yet it is the acknow-
ledgement of a just and equitable
claim, and when the grant was
made on that consideration, the
title in a Court of Equity ought to be as
firm and valid as if had purchased
with money on the same conditions."
Now in this case was made the grant,
for a money consideration by the Govern
and who did obtain by ~~means~~ of it the
means to maintain the starving
Soldiers of the country at a critical
moment of its then condition. This
fact is ascertained by the official
communication of the Govern to the

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grantee found in the Mexican archives in the year 1843 and referred to in another record in same year.
The grantee may in possession in open and notorious for three years undisturbed prior to the occupation of this country by the americans.
Under such circumstances even the Mexican Government had it continued, have refused to have recognized the claim of the grantee with justice or equity?
If the facts that the Government received a pecuniary, and for aught that appears, adequate consideration must necessarily avoid the grants, with the other circumstance that the quantity of the land granted exceeded 11 square leagues, it must be done because these grants are within the operation of the colonization laws of Mexico of 1824 in relation to the distribution of lands by donation to carry out the Colonization policy exclusively, and which restricts the quantity of lands to any one individual to 11 leagues.
The power to ~~sell~~ give under certain

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restrictions, made evidently to prevent fraud in the distribution, did not by implication repeal the power if it previously existed, ~~exp.~~ to sell for a pecuniary consideration if bona fide exercised.

That such power did exist in the Governors the Court will now consider, and give its reasons for the conclusion to which it is arrived.

In a work published in 1829 in the City of Mexico among the laws supposed to be retained in Mexico is the decree of the Spanish Cortez of 4. Jany 1813. This law evinced a spirit and policy evidently more liberal than had previously animated Spanish legislation and which probably did not operate in Spain or any of its then colonies, but it is reasonable to believe that in common with other decrees of the Spanish Cortes were called into active existence by the Spanish revolution of 1819 and was in force at the time of the independence of Mexico.

Such is the view enunciated by the Board of Land Commissioners in

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the case of The City of San Francisco vs. U.S.
and the publication of the decree in
Mexico in 1829 as one of the related
laws as of fact, confirms the opinion
of the Board.

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The Supreme Court of this State in the
case of Cohas vs Raisin (3 Cal 443) dis-
tinctly affirms its existence and cite
the compilation in which it is gi-
ven as "Leges vigentes." P. 58.
That in mind in the case of Welch vs Sulli-
van (8 Cal 168) again affirms the exis-
tence of this decree. They say, the de-
cree of the Cortes in 1813 directs &c
But there is internal evidence afforded
by the Mexican legislation on the sub-
ject of Colonization that the existence
of the decree of 1813 was known to, and
legislation was enacted in view of
some of its provisions. The design
marking the boundaries of the land
~~required~~ petitioned for, which is
required to accompany the applica-
tion to the Governor is in conformity to
the decree of 1813. Again the conditions
usually inserted in the Colonisa-
tion grants under the Mexican law
and regulations are similar to those

prescribed in the 2° Sec. of that decree
This, in its preamble among other things
declares its object to be "to furnish
with the class of lands (public lands)
in and to the public necessities
(wants), to reward meritorious depen-
dents of their country and Citizens
who have no property." The evident
intent of this decree declared on its
face is, that common public lands
should be converted into private
property and lands granted should
be distributed in fee property and
with established metes and bounds.
Upon a comprehension of this decree
the conclusion must be, that in the
absence of other legislation the car-
rying out this decree must have
devolved on the Executive Department
and the Governor of Calif. under
the instructions of the Supreme
Government would have the power
to grant common lands. Now by
that decree, the quantity of land to
one individual was not limited
to any given quantity, but as to per-
sons it was limited to citizens.
The only instance in which quantity

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is limited is in certain donations to certain official persons to whom small lots of prescribed extent were to be granted. This decree authorized grants to meritorious officers and a sale of land to aid the public necessities, and such sale made in good faith would be the legitimate exercise of power, unless the provisions of the decree confining the power has been repealed by subsequent legislation. Have they been repealed expressly, or by fair implication by the Colonization law of 1824 of Mexico or by the regulations of 1828?

Animated by a more liberal views of her interests Mexico determined to afford encouragement to immigration, and she opened her public lands to foreigners as well as citizens, and determined to make donations for colonization purposes to all who strictly complied with the terms which in the distribution of the land she prescribed to prevent fraud. Among these, was limiting the quantity of land in any donation to a single person to 11 leagues. There are many

reasons for the legislation of Mexico as to surrounding her system with checks and limits when the Governors were to distribute the public lands, which do not apply to a bona fide sale for a money consideration. Such is not a case in which by implication should be brought within the operation of the colonization laws. The construction of a law from the action of those whose duty it is to carry it out should be considered when endeavoring to ascertain the intention of the Legislature. The fact that sales have been made by Governors of land in quantities of more than 11 leagues, who owned grant by donation to a colonist not more than 11 is a circumstance not to be disregarded.

By the records of the case U. S. vs Radrigues No 479 among the files of the papers of the Board of Land Commissioners it is made to appear that Governor Pio Pico issued a grant for 12 ~~xxx~~ leagues in consideration of the sum of $12000 past indebtedness to the Government. The Board of Land Commissioners

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confirmed the claim. The land in that case is situated in the Southern district and the records inaccessible to us, and it is impracticable to ascertain whether any appeal is pending, has been made or been dismissed.

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The opinion of the Board is however of file among the archives in the Surveyor General's office. In that opinion it is stated, "that in consequence of the importance of the two questions involved, the Court took the case of under advisement, and also for the reason that the determination of the case would settle the fate of a large number of cases undetermined so far as the action of that tribunal is concerned."

The first of these questions involved the only two grounds taken in the present. It was "whether the Governor of the Government of California under the Mexican authority existed to sell or grant for a consideration of money or within limits to exceed in amount 11 leagues." The Board decided that he had such power.

In the case of the U.S. vs M. G. Vallejo No 321 the same tribunal confirmed

the principle decided in the previous case and affirmed the claim to 15 leagues. In their opinion the Board say, "There appears no objection to the confirmation of this claim except that it exceeds in amount the maximum authorized to be granted under the Colonization laws. The last five leagues do not appear to have been granted under the provisions of the colonization laws, but a sale for an actual consideration received by the Government of two thousand dollars. This point was fully considered and decided by the Court in case No. 479 and the doctrine recognized that a bona fide sale made for a pecuniary consideration by the Governor of California, under the Mexican laws vested in the purchaser both a legal and equitable interest of which he could not be divested by the Government by any rules of law or Equity."

No power certainly was given by the colonization law of 1824 authorizing the Government to grant by way of sale under any circumstances. If therefore he does not possess the power

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independently of that law it exists nowhere and need not to have been referred to by the Supreme Court U.S. to illustrate the equities of parties applying for a confirmation of their grants.

In the Cambuston case (20 How. 444) they assigned as a reason for a strict interpretation of the claimants grant and its want of equity, that there had been no pecuniary consideration paid.

In Fremont's case (17. How 558) they refer to the fact, that the grant was given for mountains and patriotic services and placed the claimant on a footing with one who had purchased with money and thus a just and equitable claim against the Government, to which a Court of Equity would be firm and valid.

It would seem that any amount of money could be legally so as to pass a title if it be conceded, that no power on the part of the Government to make a grant of the land existed. It does appear to me that when the Supreme Court refers to the money consideration of grant as resting in the breast of a Supreme equity, by so doing they have at least not decided that the Government was void.

They must have acted under the impression that the power to sell in good faith was in the Government, or that the equity of the case was such, as gave

"a just and equitable claim against the Government" the title to which in a Court of Equity would be "prima facie valid".

In either view this Court is specially on the ground of a power in the Governor of California apart from the Colonization laws to aid in good faith by a sale of land the public necessities, & this Court considers that a decree affirming that of the Board of Land Commissioners in this case must be entered. Such decree will be drafted by claimants Solicitors and handed to the Court for approval and signature.

21. March 1860.

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No 318.

U. S. Dist. Court.

The United States
vs
Wm. M. Bulkley &c.

Petition.

Filed March 21. 1860.
W. A. Cheever.
Clerk.

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In the District Court of The United States in and for the Northern District of California —

Stated Term March 21st 1860

The United States } No: 318. D.C.
vs
M. G. Vallejo & Assigns } No: 291. L.C.

This cause came on this day to be heard, upon the certified Transcript of the proceedings and decision of the Board of Commissioners on Private Land claims, and of the papers and evidence on which the same was founded, and upon the further evidence taken under the orders of this Court, and was argued by Counsel; and thereupon, in consideration thereof, it was ordered, adjudged and decreed as follows, viz:

That there is no error in the Decision of the said Board of Land Commissioners, and that the Decree of the said Board be and is hereby affirmed —

And it is further ordered, adjudged and decreed, that the Claim of the said Claimants and their Title to the said Land known as "Tuscol" is good and valid, and

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that the same be and is hereby confirmed to them — The Land of which Confirmation is hereby made, is bounded and described as follows; On the North by the Lands named Tulucay and Suisun, on the East, and South by the Straits of Carquines, Isla de la Yegua, or Mare Island, and by the Estero de Napa — For more particular description reference is to be had to the grants and Map, and the Deposition of J. M. Hudspeth taken in this cause, copies of all which are contained in the Record —

M. Hall McAllister
Judge Circuit Ct US
District of Cal

No: 318

District Court of U. States
Northern District

vs

The United States

vs

N. G. Vallejo et al

Decree of
Confirmation —

Filed March 22, 1860.
W. H. Chever,
Clerk

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At a Stated Term of the DISTRICT COURT OF THE UNITED STATES OF AMERICA, for the Northern District of California, held at the Court Room, in the City of San Francisco, on Monday the twenty sixth day of March in the year of our Lord one thousand eight hundred and ~~fifty~~ sixty. for the trial of land cases.

Present:

M. Hall McAllister, Circuit Judge.

The Honorable ~~OGDEN HOFFMAN, District~~ ~~Judge.~~

The United States
v.
M. G. Vallejo & assigns

No: 318: L.C. 291.

In this case, on application of Sully R. Wise, Acting U. S. attorney, made in open Court, It is ordered that an appeal on behalf of the United States from the final decision of this Court rendered in said cause at the present term be and the same is hereby granted, and that a certified transcript of the pleadings, evidence, depositions and proceedings in the said cause be sent to the Supreme Court of the United States without delay.

M. Hall McAllister
Judge Circuit Court U.S.
Dist. of Cal.

No. 318.

UNITED STATES DISTRICT COURT,
Northern District of California.

The United States

vs.

M. G. Vallejo
and Assignees.

Order granting
appeal.

Filed March 26th 1860,
W. A. Sherwood,
CLERK.

By

DEPUTY.

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Towne & Bacon, Printers, 125 Clay Street, corner Sansome.

UNITED STATES OF AMERICA, ss.

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THE PRESIDENT OF THE UNITED STATES OF AMERICA,

To the Honorable the Judges of the District Court of the United States, for the Northern District of California _____

Greeting:

Whereas, lately, in the *District* Court of the United States, for the *Northern* District of *California* _____ before you, _____ in a cause between *The United States, Appellants, and M. G. Vallejo and Assigns, Appellees,* the decree of the said District Court was in the following words, to wit:

"This cause came on this day to be heard upon the certified transcript of the proceedings and decision of the board of Commissioners on private land claims and of the papers and evidence on which the same was founded, and upon the further evidence taken under the order of this Court, and was argued by counsel, and thereupon, in consideration thereof, it was ordered, adjudged and decreed as follows, viz:

There is no error in the decision of the said board of land Commissioners, and that the decree of the said board be, and is hereby, affirmed.

And it is further ordered, adjudged, and decreed that the claim of the said claimants, and their title to the said lands known as "Suscol" is good and valid, and that the same be, and is hereby confirmed to them. The land of which confirmation is hereby made, is bounded and described as follows: On the north by the lands named Tulucay and Suisun; on the east and south by the straits of Carquines, Isla de la Yegua, or Mare island, and by the estero de Napa. For more particular description reference

is to be had to the grants and map and the deposition of J. M. Hudspeth, taken in this cause, copies of all which are contained in the record."

as by the inspection of the transcript of the record _____ of the said District Court, which was brought into the Supreme Court of the United States, by virtue of an Appeal _____ agreeably to the act of Congress, _____ in such case made and provided, fully and at large appears.

And whereas, in the present term of December, in the year of our Lord one thousand eight hundred and Sixty one the said cause came on to be heard before the said Supreme Court, on the said transcript of the record, and was argued by counsel: **On consideration whereof,** it is now here ordered, adjudged and decreed by this court that the decree of the said District Court in this cause be and the same is hereby reversed and that this cause be and the same is hereby remanded to the said District Court with directions to enter a decree for the United States dismissing the petition of the claimants.

11th March.

You, therefore, are hereby commanded that such further proceedings be had in said cause, in conformity to the opinion and decree of this Court as according to right and justice, and the laws of the United States ought to be had, the said Appeal notwithstanding:

Witness the Honorable Roger B. Taney Chief Justice of said Supreme Court, the first Monday of December in the year of our Lord one thousand eight hundred and sixty one.

COSTS OF ~~~~~
Clerk ..... $ ~~~~~
Attorney ... $ ~~~~~

$ ~~~~~

~~Taxed by~~ Wm. Thos. Carroll

Clerk of the Supreme Court of the United States.

No. 118, December Term, 1861.

No. 318.

MANDATE

SUPREME COURT UNITED STATES.

U. States vs. Vallejo's Heirs.

Filed June 9, 1862.

W. T. Carroll, Clerk

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At a Stated Term of the DISTRICT COURT OF THE UNITED STATES OF AMERICA, for the Northern District of California, held at the Court Room in the CITY OF SAN FRANCISCO, on Tuesday the tenth day of June in the year of our Lord one thousand eight hundred and sixty-two

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States

v.

M. G. Vallejo and assigns

L.C. 291 : D.C. 318.

It appearing to the Court that the claim of the above named claimants was confirmed by the decree of this Court of March 22. 1860; that an appeal was thereupon granted to the Supreme Court of the United States in behalf of the United States; and that the mandate of the Supreme Court has been duly filed, reversing the said decree of March 22. 1860, and directing this Court to enter its decree accordingly, Now Therefore, on application of Wm H. Sharp Esq, U.S. District Attorney, It is Ordered, adjudged and decreed, that the claim of the said M. G. Vallejo and assigns is not a valid claim, and that the petition of the said claimants for a confirmation of their said claim be and hereby is dismissed.

Ogden Hoffman
Dist Judge

No 318

UNITED STATES DISTRICT COURT

Northern District of California.

The United States

v.

M. G. Vallejo & assigns

Final Decree.

Filed June 10. 1862

W. H. Chevers.

Clerk.

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United States
v.
W. G. Vallejo

Transcript No. 153.
D. C. No 741.

Sir,

Please take notice that I have this day filed in the above case in the District Court, the following Documents with translations of the same to be used as Evidence at the hearing of this case, viz: A traced copy of Expediente No. 229: Also a traced copy of a "Document on file in case No. 760, on Docket of Board of Land Commissioners"; both certified to be true copies by the United States Surveyor General under his hand and seal of office. Also a copy of a "Record in Book J of Sonoma County Records, p p 41 & 42" certified to be a true copy under the hand and official seal of the Recorder of Sonoma County.

Respectfy &c

To

U.S. Dist. Atty.

Wm Blanding
Atty for Claim

U. S. Dist. Court.

United States

v.

W. G. Vallejo

Notice

Copy rec'd Sept 31st 1858

P. DeLa Torre

U. S. Atty.

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United States
v.
M. G. Vallejo

Transcript No. 153.
D. C. No. 741.

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Respectfy &c.
Wm. Blanding
Atty for Claim.

To
U. S. Dist. Atty.

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U. S. Dist. Court

United States

v.

M. G. Vallejo

Copy Notice

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Prior to the decree of 18th of August 1824 the Governors of California, as we have shown in our brief, had powers to grant lands in California to Mexican citizens but not to foreigners. Vide Escriche. verb. "Extranjero" 668. Id. "Natural" 1273. By that decree, foreigners were invited to settle in Mexican territory, and were promised freedom of opinion and security in their persons and property. The Executive was authorized in the territories, and by congress in the States to grant them lands, without limitation except as to quantity, (11 leagues) and ~~caption~~ the preference given to citizens of Mexico in the distribution of the lands. The Executive performed this duty imposed on him by the decree of 1824, through the Governors so empowered and directed by the Regulations of 1828. The whole object of this decree, as appears on its face, was to invite and secure foreign immigration. It repealed no prior laws except those relating to the rights of foreigners. It took nothing from but added to the powers of the Governor. The power conferred was a special power, hence the governor could only grant to foreigners who came to settle in the ~~Territory~~ of Mexico, (Colonizadores) under and in strict compliance with the provisions of the decree and regulations above cited. This appears from the 15th section of the "Ley Constitutional" quoted on the 668th page of Escriche. The 7th sect. of the decree of 1824 provided that Congress should pass no law prior to the year 1840 prohibiting the entrance of foreigners for the purposes of Colonization,

hence the provisions of this decree as
to foreigners remained unchanged
(Rockwell. 611)
the decree of
till the 11th of March 1842 by which
it was decreed, that foreigners should
not thereafter, obtain grants of the
public domain, without contracting
for them with the Supreme Government.
Vide Sect. 12. — The right of foreigners
has therefore never been denied, to
obtain grants of land between the years
1824 and 1842 - The Government had
the power prior to the decree of
1824 to grant lands to Mexican
citizens; that decree, relates to the
right of foreigners and the policy of
the Government as to them. It does
not diminish the powers of the Gov-
ernment in any respect whatever, but
except as to the quantity to which grants might
through the Executive regulations
of 1828 that power was increased
in this that grants might be made
to foreigners in a specified manner
and for a particular object —

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At a stated term of the District Court of the United States for the Northern District of California held at the Court Room in the City of San Francisco in and for said District on the . day of March A.D. 1857.

Present the Honorable Ogden Hoffman Jr. Judge

The United States Appt.
v
Mariano G. Vallejo. et al Respts.

This cause coming on to be heard upon an appeal from the final decision and decree of the Board of Commissioners to ascertain and settle private land claims in the State of California organized under the act of Congress passed March 3. 1851 and upon reading and filing the transcript of the records and proceedings of the said Board and the notice of appeal petition and answer in this cause. Counsel on the part of the appellant and respondents having been heard and due deliberation thereupon had. upon motion of B. S. Brooks Esquire attorney for the Claimant Respondents

It is ordered adjudged and decreed that the decision and decree of the Board of Commissioners be and the same hereby is in all respects affirmed

And it is further ordered adjudged and decreed that the title and claim of the Respondent is confirmed to the tract of land situated in Solano County and known by the name of Soscol and bounded as follows

to wit.

On the north by lands named Tulcay and Suisun and on the east and South by the Straits of Carquinez and Estero de Napa. — Reference being had to the Grant and Map and the deposition of O'Farrell on file in this cause

Docket No. 318

U.S. District Court
for the North'n Dist. of Califa

The United States
appellants

Mariano G. Vallejo
Respondent

Decree of Confirmation

Brooks
atty for Clt

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United States
vs Fallés et als } Fiscal.

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The genuineness of the Grant in this case, the payment of the consideration, and the bona fides of the transaction, are not seriously contested. The difficulty in the way of a confirmation grows out of the following questions which arise in the case.

The first is, could a Governor of California at the date of this Grant dispose of the public land for a pecuniary, or valuable consideration?

And, Secondly, if he could do so, whether he could sell to one individual, more than the maximum of eleven square leagues prescribed in the 12th section of the Decree of August 1824?

That the Governors did sell land in some instances, and that in cases of sale, they did not, as they did invariably in making donations under the colonization law of 1824, restrict the quantity within eleven square leagues, seems to be conceded.

It is needless to refer to the numerous decisions of the Sup. Court of the U States, on the doctrine of presumption, applicable to the acts of the Governors, executing the functions of the Granting officer in the Provinces. I will only cite the late case in 19th How 347 reasserting all the former decisions on the subject. From those decisions, it may be deduced as a well established principle of jurisprudence in the Sup. Ct. of the U States, "that the acts of an officer to whom a public duty is assigned, within the sphere of that duty, are prima facie taken to be within his power, and that he who controverts a Grant executed by the lawful authority takes on himself the burden of shewing that the officer has transcended the powers conferred upon him." As is said in many of the cases, "Courts of justice ought to require very full proof that he had transcended his powers, before they so determine it."

This doctrine of presumption, tho' applied in all

the instances above cited, (except the case from 19th Howd.) to the case of an officer acting under the King of Spain, for it is a principle of universal application, to officers deriving power from any Sovereignty. In the case of a grant on a warrant issued by an English Governor in Virginia, the same doctrine was announced by the Sup. Ct. of Kentucky Hardin's Repts 362. After stating it as a "well settled principle of law, that every officer acting under the sanction of an oath, or in whom the Government reposes a trust, shall be presumed to have done his duty until the contrary be proved &c" concludes, "He having issued the Grant, we must presume that he had the warrant to authorize the Grant, until the contrary be proven." The question then is, has the U States made such proof? She surely has not. But if we are compelled to shew the authority for this Grant, I think the laws of Mexico do fully sustain it.

The laws of Spain so far as they were not in conflict with the Republican form of Government adopted at the Mexican Revolution, were all continued in force; and by the plan of Iguala and the Treaty of Cordova the Governors of the Provinces retained the power to grant lands in the same manner as they did before the Revolution. This state of things is recognized by the the Sup. Court of the U. States in 19th Howd. 348; in which case this doctrine was applied to sustain a grant made, as to part of the land, after the Revolution, and before any decree of Colonization by Mexico; and the general power of the Governor to grant without restriction as to quantity was expressly sustained.

The prevailing influence of liberal principles in Europe in 1813, was manifested by the decree of the Spanish Cortes of that year, in which it was wisely determined as the best policy of the Government, to proceed to convert into private property all the baldios, and Royal lands of the Provinces.

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The power of granting the public land had for a long time been delegated to the Governors of Provinces; and if this Decree of 1813 had not been followed up by any other, and further laws by Mexico, there is no doubt, that it would have been carried into effect, through the instrumentality of the respective Governors; but without being repealed in toto, it was modified considerably by Mexican Legislation. The most prominent Decree on this subject by the Mexican Republic was that of the 18th of August 1824, and the Executive Regulations carrying it into effect, of November 1828. This last named legislation was evidently enacted in view of the provisions of the Decree of the Cortes of the 4th of January 1813. The Map or design making the boundaries of the land petitioned for, which is required to accompany the application to the Governor, was in compliance with the said Decree of 1813, which for the first time declared, "that all dispositions of the public domain in whatever mode they may be made, shall be in full property, and in the class of lands designated by miles and bounds. So the conditions inserted usually in the grants made after the Decree of 1824, are those enacted in the 2d Sect. of the Decree of 1813. The preamble of the Decree of 1813 declares the object of the decree to be, "to furnish aid to the public wants (of course by sale), to reward the meritorious deserts of the Country, and to give aid to such citizens as have no land. It will be observed that this decree does not embrace foreigners; — It authorises a sale of the public land for the public necessities, without limit as to quantity: — It also authorises donations to certain persons but limits them in quantity to sitios, or small lots of limited extent.

The Decree of August 1824 "Sobre Colonizacion" does not repeal the power of sale to supply the public necessity as expressly provided in the Decree of 1813. That power of

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sale was not disturbed or affected in any particular. To have limited the quantity to be sold to any individual might have destroyed the efficiency of the provision: and thus it was wisely left as it always had been, to the discretion of the officer, as well to decide when it was necessary to sell at all, as to regulate the quantity by that necessity, and the means of the individuals proposing to purchase. The Decree of Augst 1824, and the Regulations of 1828, provide alone for gratuitous concessions: they embrace foreigners as well as citizens: they limit those gratuities very wisely to the quantity of eleven square leagues.

The sale of the public land for public necessities, without any restriction as to the quantity to be sold to any one purchaser, was authorized beyond controversy down to the year 1824. On the 18th of August of that year was enacted the Decree of Colonization, whose object was to authorize gratuitous donations of lands to those who might desire them, to occupy, or to cultivate. The question of construction arises, whether the 12th section of that act was intended to apply, only to that species of disposition to which the whole act exclusively applied, or embraced the case of a sale for the relief of the public necessity. The motive for such a restriction in the case of sale is not perceptible. The idea of danger to the commonwealth from overgrown landed estates, accumulating in individual hands, if intended to be enforced as a great public policy, would surely have been protected, and announced in a more adequate form, than is given to it, by this section of the law of 1824. acquisition by purchase of one individual from another, is left without any restriction, and yet in that mode, all the evils of a landed monopoly, are most usually superinduced. The conclusion to which my mind has been brought, is, that this section, was merely a restraint upon the public bounty,

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with a view to its largest enjoyment, & its most equal distribution: and not an attempt to prevent the accumulation of real estate in the hands of purchasers, either from private individuals, or from the Government. It was of the same nature with the donation of the Government of the United States, of 160 acres of the public domain, to the first settler upon it.

The construction put upon the law by those whose duty it was to carry it into execution, and their course of action under it, without reproof or correction, is a forcible argument on the question of intention on the part of the Legislature. It ought to have great weight, if it be not conclusive. The fact that sales of the public domain were made to supply the public wants, in larger amounts than 11 leagues, by the very same Governors who both before and after such sales, would only grant to colonists, the quantity of 11 leagues or less, shows that they did not construe the 12th section of the act of 1824, as imposing a limitation upon sales of land for necessary public purposes.

In considering this question we ought not to overlook a matter so generally known, as the extraordinary powers of Michel Torena. who made this grant. By reference to his instructions of the 11th of February 1842, we find in the first paragraph, after reciting the peculiar condition of things in this department the following, "As the President has been pleased to grant to Y. E, over and above the attributes assigned to you by the existing laws and regulations as Governor, Commandant General, and Inspector, all the powers which the Supreme Government can confer upon you &c". If it were necessary to rely upon this as a source of authority it seems to me that it might well be deduced from thence. But as the same thing was done by another Governor acting upon his general power. I do not think it necessary to rely upon the special powers of Micheltorena. In Case No. 479. in the Land Commission there appeared a sale by Alvarado for a money consideration of more than 11 leagues of land. This claim was confirmed by the Board & Judge Hempstead

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writing the opinion, in which it was holden, that on the princi-
ples of Equity, as the Government had received the fair consideration
paid to her officer, she ought not to withhold the land: and as the
former Government ought not, and could not, would not have disturbed
the contract of sale, that this Government should not disturb it.

In the opinion of Ch. J. Taney in the Fremont case I think
the views I have presented are fully countenanced at least. Indeed,
it may be considered as recognized, in such a manner as to be
entitled to the weight of an express decision, "That there was in the
Governor of California, power of disposition of the public domain,
derived from other sources than the Colonization Laws of 1824. It is re-
ferred to as an axiom, or settled ground of argument, by which he
proves the proposition of the case in hand:- and this I think is
entitled to all the weight of a decided case. I will transcribe
the paragraph on page 558 of 17th Howard for convenience "The
words of the Grant are positive and explicit. They purport to convey to him
a present and immediate interest. And the Grants were not made merely
to carry out the Colonization policy of the Government but in con-
sideration of the previous public and patriotic services of the Grantee.
This inducement is carefully put forth in the title papers. And al-
though this cannot be regarded as a money consideration making
the transaction a purchase from the Government yet it is the acknowledg-
ment of a just and equitable claim; and when the Grant was made on
that consideration the title in a court of equity ought to be
as firm and valid as if it had been purchased with money on
the same conditions."

Thornton Williams & Thornton
of Counsel for Claimant.

Not only in Fremont's case is the validity
of a grant, made upon pecuniary consideration,
recognized, but also in Cambuston's case
20 How. 64 - Two attorneys General have
passed on this title and the Government

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have admitted its validity - by purchasing under it and erecting on it valuable and costly improvements ——

It is fully proven that the procuring consideration was received by the Mexican Government - What act could constitute a higher Equity - Upon what principle could she receive the money with one hand, and take back her title deeds with the other - What Court of Equity - would suffer her to retain both land and money - No court of Equity - ever annulled a contract when the consideration had passed, except upon the condition that the consideration be returned - this is now impossible, the Mexican Government have received the money and appropriated it - to public uses, thus ratifying the transaction, and even in the absence of power in the granting Officer, creating an Equity, which upon plainest principles, the Mexican Government would have been bound to respect —— More than three thousand people are now residing upon this land and claiming the benefit of this Equity so fully heretofore recognized by the Government of the United States ——

NB. This Court confirmed by its decree the Petaluma Rancho, four leagues of which were a purchase; upon appeal the Attorney General approved the decision and dismissed the appeal, thereby making final the decree of the District Court. Exhibit A. being a certified copy of a letter from Archives, ratifying the evidence of Cooper and proves the delivery of the grant at a date — The Limantour case was rejected, on evidence of similar letters from same book

No 318.

The U States vs Valleys &c

Brief of

Thornton Williams & Thornton

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U.S. District Court

The United States. Appt
v
Mariano G. Vallejo. Respt

No. 318.
"Soscol"

Nov. 7. 1835	Transcript from Board of Comrs. filed	
Feb 15th 1836.	Petition of appeal filed by U.S.	
" " "	Answer filed by P.B.S. Brooks for claimant	
Transcript.	Entries in the clerks minutes	
	1 Filing of claimants Petn & docket.	1
	2. " Depn of Mariano Vaca & Felipe Peña.	"
	3 " " " Salvador Vallejo.	"
	4 " " " Pablo de la Guerra	"
	5 " " " Isaac B.R. Cooper.	2
	6. Case ordered upon docket	"
	7. Filing depn of Jas. N. Hudspeth.	"
	8. " " " Salvador Vallejo & Cayetano Juarez	"
	9 Ordered to the list of 2nd class cases.	"
	10. Filing J. D. Marks depn	"
	11 " Wm Pantoja "	"
	12. Submission of case entered	3.
	13. Filing 7 certd copies depns taken in No 230.	"
	14. Delivery of the opinion of the Board	"
	15. Entry of order to transmit transcript	"

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Deposition of S. Vallejo. boundaries & gen^l. poss^n. — 8
Deposition of C. Mares. Occupation cultiv^n & boundaries 11
Dep^n of J. F. Peña " " " " — 12
" " M. Vaca " " " — 13
" " S. Vallejo " " " — 14
" " P. de la Guerra. signatures of Micheltorena & Arce 15
" " J. B. R. Cooper. Delivery of supplies to Gov^t. by M. G. V. 16
" " J. D. Marks. Powers of Michel^na & approv^l of. Genl Gov^t. 17
" " H. Pattero. Amount of land in the tract — 21
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" " J. M. Hudspeth. (same case) boundaries & occupation 26
" " J. B. R. Cooper (" ") occupation &c — 30
" " Geo C. Yount. (" ") " — 31
" " S. Vallejo. (" ") " — 33
" " J. O'Farrell (" ") Survey of Petaluma — 38
" " M. G. Vallejo. (" "). Loss of Plan of " — 45

Certified copies of depos taken in case 250. Petaluma and filed in this case by stipulation but are irrelevant

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4. Deed of Sale from Gov^t. to Vallejo for same land (for $5000) 19 June 44 — "
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Petaluma

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J. Ruth
for Rush

Transcript

No 318

U. S. District Court

The United States appt.

v

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U. S. District Court.

The United States
Appellant
— vs. —
Mariano Vallejo & ass'ps
Respondent.

Soscol
D.C. 318. L.C. 291.

No question has been made either in the Land Commission or in this Court as to the genuineness of the title papers. The only point debated and decided in the Comission was as to power of Micheltorena to convey lands of the nation for a valuable Consideration received by the goverment.

The Transcript was filed in this Court on the 7th November 1855. On the 9th day of March last the Case was called on its order. On motion of Gov Foote 1 week was allowed to take testimony on the part of the government. The testimony was taken and it was so confused and contradictry that Gov Foote abandoned the Case and has not since appeared in it. On the 16th the proofs were closed and the Case was continued to the 23d to enable the District Attorney to file a brief and from that time until the adjournment of the Court in May last the Court is no doubt aware that I have urged the District Attorney to file his brief with more pertinacity than has at all times been agreeable to the Court.

It Certainly is an anomaly in all judicial proceedings that a plaintiff who had received a Judgment in the Court of first instance should be tied up for two years in an appellate Court without any

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assignment of Errors. To be kept two years in Court. and testimony in fact taken by the appellant without informing him what are the grounds of his appeal.

At this late day I receive this Brief of my opponent after the proofs are closed and the Case submitted, and I hardly know whether the Court will Consider an argument at all necesary. But from the importance of the Case I shall take the liberty of troubling the Court with a few remarks.

In regard to the importance of the Case. The Extend of land is large. But great rights have grown up under it Two Cities of Considerable importance have grown up under the title Benecia & Vallejo. The Government itself has large and expensive improvements upon it holding its title to the headquarters of this division of the army under this title. It has been passed upon and approved by Several Successive Attorneys General of the United States and ought to be Considered as Settled.

The land is granted to M.G. Vallejo by Micheltorena for the Sum of $5000. The payment of the Consideration is proved . The grant is by metes and bounds without restriction as to quantity. The grant declares that the land is Sold for the Consideration of $5000. the receipt of which is acknowledged and that the land is Conveyed to him without any restriction.

The grant is proved by Don Pablo de La Guerra.

The District Attorney notes in his brief that the original approval of the assembly is missing

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from the papers and there is no proof of its execution. The Commissions say in their decree that it was proved and I never heard any suggestion of its absence until I noticed it in the Brief of the District Attorney. The original document is no doubt annexed to the Deposition proving it and it has got mislaid. Perhaps it was handed in to the Commissioner after the Case was submitted and at their Suggestion and was not placed with the other papers. They find the fact proven and we must presume that it was. I was not in the Case until it came into this Court and knew nothing about it.

The District Attorney says that evidence of "rather a general and vague nature" has been introduced in this Court on the part of the government (this was the testimony introduced by Gov Foote) "to show that up to the time of the american occupation this land was occuppied by and in charge of a few mexican Soldiers under Command of a Sergeant and the land was what the witnesses call a national farm, witnesses were also introduced to impeach the testimony of Salvador Vallejo and José de La Rosa witnesses for the Claimant befor the land Commission. no testimony has been introduced impeaching the genuineness of the title papers.

The District Attorny may well charracterize the Evidence as "general and vague" but it is more than that — It is so Contradictary that no two of of their witnesses agree in any particular — but Contradict each other broadly. None of them really knew

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anything about the Ranch personally from the date of the grant until the american occupation and the Sergeant who was said to have been in Command was as those witnesses testified – alive and in San Francisco at the very time they were testifying and the goverment did not see fit to call him. Some attempt indeed was made to impeach the Credibility of Salvador Vallejo and José de la Rosa but very slight and no witness was called to Contradict them. However the testimony of S. Vallejo and de la Rosa is entirely unimportant and may be entirely thrown out of the Case.

The first question raised by the Goverment is that Vallejo did not build a House on the Rancho Subsequent to the grant. I do not Consider that the grant was subject to the Conditions of the Colonization law. We do not Claim title under that law. – We Claim by purchase. But there was a Substantial Compliance. Vaca, Ynares and Peña unimpeached Witnesses testify that he had a House on it that he Cultivated a portion of it and had a large number of Cattle on it. The District Attorney says he did not put Cattle on it, but he says "Vallejos Cattle seem to have roamed over it" – Where did they roam from? Vallejo had no land bordering on it – Singular that his Cattle should have roamed over it without being put there – In fact he had an immense herd there, and some of them are there Yet. Estell and others killed Cattle there for years under Contracts with Vallejo after the American occupation, but they could not catch

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them all and Some are there Yet.

The Conditions annexed to the grant under the Colonization Law were the Consideration of the grant. The performance of these Conditions raised on Equity which entitled the occupant to a grant & to the Confirmation as the Board and this Court and the Supreme Court have many times decided, but they raise no Stronger Equity than the payment of the purchase money. The Supreme Court place it in the same footing. In Fremont vs The U. S. 17 Howard 558. the Court Say "The grant was not merely to Carry out the Colonization policy of the goverment but in Consideration of the previous public and patriotic Services of the grantee. This inducement is Carefully put forth in the title papers and although this Can not be regarded as a money Consideration making the transaction a purchase from the Goverment Yet it is the acknowledgment of a just and a Equitable Claim and when the grant was made on that Consideration the title in a Court of Equity ought to be as form and valid as if it had been purchased with money on the Same Conditions". But the grant on its face declares plainly that the land is Con= veyed to Vallejo without any restrictions.

But the main question and the only one Ever Suggested before this Brief was filed is whether Micheltorrena had power to make this grant. to Sell in fact -

The Comision decided this point in the affirmative that he had

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The Attorney General of the United States decides that he had - The Petaluma Case was decided by this Court in the same way. It involved the same point and the Court affirmed the decision of the Board of Land Commissioners. It is true that the Case was decided without argument and merely on first impression but an appeal was taken on that point alone and by the last Steamer notice of a dismissal of the appeal was received from the attorney General which I presume settled the point so far as his opinion is concerned.

The Supreme Court in the Fremont Case, certainly assume that the Govr had such a power. The point was not directly before them, but they declare that opinion and it runs all through the case

So far therefore as we have any authority on this subject it is all in our favor.

Taking it up as a new question we take as a starting point the decision in the Arredondo Case, 6. Peters 724. The grant legally and fully executed was competent evidence of the matters set forth in it and as none other was necessary it was in effect Conclusive "Page 727" the Principle which prevails as to all public grants of land or acts of public officers in issuing warrants orders of Survey permission to cultivate or improve as evidence of inceptive and nascent titles is that the public acts of officers purporting to be exercised in an official Capacity and by public authority shall not be presumed to be an usurped but a legitimate authority previously given or subsequently ratified which is

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Equivalent" Page 729 "a public grant is to be taken as evidence that it is issued by lawfull authority" I might quote many other passages from the same opinion and other subsequent opinions of the Supreme Court to the same effect but I know that this Case has been so frequently cited and commented upon by this Court as to be as familiar as the alphabet.

Taking the grant then as sufficient evidence of the Authority making it in the absence of any proof to the Contrary what are the objections raised against it.

It is said that Mexico is a Republic - But was Mexico a Republic at the time of making the grant? I must confess that I am not Confident in my Competency to decide that point. If Mexico was a Republic at the time this grant was made when Santa Anna was Dictator I do not know what a Republic is. The District Attorney says that the United States would not tolerate a Despotism so near their own teritorial limits Mexico has seen many Changes of Government has had many Constitutions plans bases &c. I am not aware that any one of these has ever been submitted to the people of the United States for their approval or ratification or to the Government thereof and I do not think the Mexican Nation are Sensible of any such necepity. I am not aware that there is any authority for the assertion that the people of the United States would not tolerate a Despotism in Mexico. There is

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no Clause in the Constitution that Sanctions any such idea. there is no instance of its Exercise on the Contrary the Government of the United States has on Several occasions asserted the right of Every nation to govern itself in its own way and has denied the right of any other nation to interfer in the matter. and has justified this declaration on the principles of the law of nations The Monroe doctrine does not to go to that Extent I. have indeed heard such doctrines advocated by Certain Fillibusters but it has fallen to the lot of the District attorney to punish "people of the United States" who attempted to Carry out such ideas and I. doubt whether our Government would tolerate a District Attorney with such Fillibustering propensitities. It Can not therefore be inferred from any such principle that a Republic did in fact Exist in Mexico in the Year 1844 —

Nor if it was positively proved that there was no Despotism at that time, but a Republic would it follow that a governor of a territory Could not sell lands of the nation for the support of the Government. Such a restriction is by no means essential to the Existance of a Republic. The right to Sell lands for the support of the goverment of a Republic does not strike me as any more absurd than the right to grant them to Colonists gratuitously

Nor do I. find it Established that the Republic of Mexico was Existing under a written Constitution in 1843–4 Unless the Bases of Jacubaya can be termed by such a name

The District Attorney asks me to point out where

in the written Constitution (I do not know what document he refers to) the Mexican People have conferred upon the Legislative Executive or judicial branch ## power to Sell lands? It appears to me that this is his duty. If he could Show that by the Constitution of Mexico the power to Sell lands was restricted to Some other branch of the government than that which Exercises it I Should find Some force in the argument. He finds no Such restriction. I Suppose the Mexican government had power to Sell its public lands. I find the Governors of Territories exercising that power in the name of the nation. I do not find that any other branch of that Government ever exercised the power or claimed any right to Exercise it or questioned its exercise by the Governor. The Legislative branch Sometimes approved the act after it was done, but they never presumed to exercise the power to grant. It was purely an Executive function. I am not aware that the Supreme Executive ever Exercised it, or any other power but the governor. The power certainly Exists Somewhere and unless my opponent can find it Somewhere Else it must be legitimately where we find it Exercised. But his assertion is that it Existed no where. He Says "admitting the Existing of Such a power Somewhere under the Mexican Constitution (an admission which could not be made Save for argument Sake) If the District Attorney means that the Constitution of 1826 did not dispose of the power to Sell lands I am willing to concede it, and therein is the weakness of the argument. If You Examine the diffrnd mexican plans

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Constitutive acts Constitutions &c you find in each of them the same provision which is inserted in the Constitution of this State Seperating the legislative Executive and judicial and forbidding the Exercise of any two of these powers by one person or body The granting or Conveying land is by the universal practice of all nations an Executive function. In our government and in all Common law Countries the land passes by the patent of the Executive and under the Civil law by the Grant or Titulo of the King. Intendente. Gefe Politico - Presidents of Royal audiencias &c &c. It is peculiarly an Executive function. It is competent in the Legislative function to limit Control restrain or regulate the Exercise of any of any Executive function which is not regulated by the Constitution and if the mexican Constitution has not reposed in the hands of the Supreme Executive the Control of the Subject of Sale and grants of lands. I do not doubt but the legislative body may regulate its Exercise But they dont Create the power nor can they Exercise the power themselves. The District Attorney looks in vain for any action on the Subject and I am confident that the facts will bear me out in the assertion that the Legislature of Mexico never did attempt at any time or in any instance to legislate on the Subject. I think I can satisfy the Court if it is necessary that such is the fact. But the present point of Enquiry is simply as to the Constitution of 1826 and I will also refer the Court to the different Changes of Goverment up to that date and then admit that there never was any restraint

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upon the Executive in this respect. The Treaty of Cordova recognizing the nationality of Mexico was Signed 1821 Oct 4th 1821. a Goverment was formed Styled "La Regencia del Imperio Gobernadora entorina por falta del emperador". and on the 6th of October the act of Independence was signed and promulgated and on the 15th Nov. following Iturbide was declared regent. on the 29th Febry 1822 Congress declared the national Sovreignty to reside in the Congress at the Same time adopting limited Monarchy as the form of goverment. Calls to the Throne those named in the Treaty of Cordova Separates the Executive judicial and legislative powers reserving to itself the legislative. On the 11th April 1822. there was a Regency Constituted Composed of Iturbide Yanez Valencia Count Casa de Heras & Nicolas Bravo. On the 31st March 1823 It declared the Executive power Existing since. May 19th 1822 at an end and Constituted a provisional Executive government Styled "El Supremo poder Ejecutivo". and Clave Bravo Negrete & Victoria to this power. On the 8th April of the same Year they declare the Coronation of Iturbide to have been a work of violence and force and that it was a nullity. They declare that he never was Emperor. on the same day they repeal the plan of Iguala and declare that it was never lawfully adopted and abolish the form of goverment Established by that Plan. the Treaty of Cordova and the Decree of Feby 24. 1822. on the 16. April 1823. they abolish the term "Imperial" and Substitute "national". on the 26. Jany 1824 They Confer Extraordinary faculties on the goverment. That is

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they Confer absolute power upon it. on the 31st of the Same month they pass the "Acta Constitutiva dela Feduncia" in which they re-enact the Same division of powers and declare that the legislative power Can never be deposited in an individual

I need not trace their goverment through the intermediate Changes. I do not look upon any of these Changes in the aspect of a Constitution. There is no such thing ever to be found in the Same in which we understand the term. There was a Constitution but it was unwritten It Consisted of Certain fixed principles of goverment which now through and grew all these proceedings and all the subsequent proceedings without being Created by any of them. It is indeed declared in one and assumed in all the others, that the Sovereignty Existed in Congress, a distinction so marked & Peculiar as at once to put out of the Case any analogey with the Constitution & goverment of our own Country,

I have referred the Court to these various acts and proceedings without quoting them at length to show that they assume "the Executive power" as a subject matter of legislation a thing Known and defined which they do not Create but simply dispose of — repose in Certain hands. And their Executive power was that which they had from time immemorial been accustom to see used and Exercised by the Spanish Monarchy in which was and always had been included the power of the disposal of the Public Lands.

I have presented this mere sketch or outline view of the Constitution & laws of Mexico to 1826 inclusive because my opponent bases his argument upon it and not because it should govern in the present case, for it was not in force at the time the grant was made. So far as the form of government and distribution of powers was concerned the Constitution in force at the time was or were the "Bases de Jacubaya" and by these all power except the purely Judicial was placed in the hands of Santa Anna.

So much of the "Bases". as is material to the present enquiry is as follows

---

"Bases de Jacubaya"

Sept 28th 1841

"Primera. Cesaran por voluntad de la nacion en sus funcciones los poderes llamados supremos que estableció la constitucion de 1836 exceptuandose el judicial que se limitara a desempeñar sus funciones en asuntos puramente judiciales con arreglo a las leyes vigentes

Segunda. Se convocará otro medio para suplir la voluntad de los departamentos que nombrara una junta compuesta de dos diputados por cada uno nacidos en los mismos o ciudadanos de ellos capitales de Mexico los elegira el Exmo Sr. General en Gefe del ejercito Mexicano con el objeto de que estos designen con entera libertad la persona en quien haya de depositarse el ejecutivo provisionalmente

Tercera - La persona designada se encargara inmediatamente de las funcciones ejecutivo puntando

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el juramento de hacer bien a la nacion en presencia
de la misma junta

Cuarta - El ejecutivo provisional dará
dentro de dos meses convocatoria para
un nuevo congreso el que facultado
ampliamente se encargara de constituir
a la nacion segun mejor le convenga

Quinta El congreso extraordinario se
reunirá a los seis meses de expedida la
convocatoria y no podra ocuparse de otro
asunto que no sea de la formacion de la
nueva constitucion

Sexta El ejecutivo provisional responderá
de sus actos ante el primer congreso Constl -

Setima Las facultades del ejecutivo
provisional son todas las necesarias
para la organizacion de todas las ramos
de la administracion publica -

I need not refer the Court to the appointment of
Micheltorena nor the instructions given to him. It is known
to this Court that at this time Santa Anna was absolute Dictator
and embodied in himself the Entire government and exer-
cised all the Sovreignty of Mexico this power so far as the Cali-
fornians were Concerned he delegated to Micheltorena. His
Exercise of the powers Conferred upon him was never ques-
tioned by the Dictator but on the Contrary on his return to
Mexico he was rewarded and honored

My opponent Cites the Celebrated Decree con-
cerning Colonization as regulating & Controlling the power

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of disposal of the public lands. I have already remarked that the Congress never legislated on the subject or in any manner interfered with it or controlled it per se. This law is no exception. It was not intended to regulate or Control the disposal of lands except incidentally — Its primary object was Colonization - that is the Settlement of its lands by foreigners - It opens with an invitation to foreigners, and it regulates the disposal of lands to them Mexican Citizens are only mentioned incidentally - That they the native born should be preferred in the distribution of the public lands. This is the view taken of it by the Supreme Court of the United States „ Arguello vs the U. S. 18 Howard 547. 548. 549. The Court decide that the restrictions of that act do not apply to mexican Citizens, that the Subject of the act is "Colonization" and that "Colonization" means Settlement by foreigners. Of Course if the title of Mexican Citizens depended for their validity upon that act. they would be as much subject to its Conditions and restrictions as foreigners. The whole object of the act was to permit Colonizations — Settlement of the national domain by foreigners and incidentally such provisions are introduced as are necessary to protect the rights of mexican Citizens.

I. should be very willing to argue the Case at great length if the Court should Consider it necessary, but I. understand that the whole question has been disposed of by the Goverment and the principle upon which the appeal was taken abandoned. In the Petaluma Case there was in the first place a grant made of ten leagues. About this there was no question. Then by a second

grant the Sobrante of five leagues was sold to Vallejo on this question and this alone the Government gave notice of its intention to prosecute an appeal, after considering the matter maturely the Attorney General has since this case was submitted abandoned the appeal and that case and the appeal has been dismissed. This it appears to me should dispose of the question,

All which is respectfully submitted

R. Root

pr. C. [illegible]

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318.

U. S. District Court

The United States
appellant

— vs —

Mariano G. Vallejo et ass'ts
Respondent

Respondents Brief

Brooks
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U. S. District Court
for the Northern District of Cala

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M. G. Vallejo & assigns
Respondent.

vs,

The United States
Appellant.

City and County of San Francisco,
Northern District of California ss. John B. Frisbie being duly sworn deposes and says, that he resides at the town of Vallejo upon the Sosal Ranch, and has resided there for the last four years, and in California since March 1847, and that he is well acquainted with the tract of land confirmed to the Respondents herein and known as the Sosal Rancho, and with its boundaries and inhabitants. That the places within the bounds of said Rancho are The City of Benicia, The City of Vallejo, Village of Sosal, The Pacific S.M. Depot and works. The head quarters of the Pacific Division of the U. S. Army and Thompsons extensive nurseries The number of persons claiming under this title exclusive of the United States and the P. M. S. S. Co is from two to three thousand, of which about two hundred are holders of farming land and the balance in the different settlements. The amount of money expended in improvements upon the Ranch is at least

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Five Millions of Dollars. The number of persons upon the Ranch claiming as squatters settlers or through the U. S. preemption laws does not at the present time exceed four or five persons, although at times there have been much larger number, most of them have purchased under the title. All the land occupied by the United States upon this Ranch are held by her by virtue of a perfect title from the claimants herein.

Subscribed and sworn to before me this 4th day of March A.D. 1858.

J. M. B. Frisbie

D. F. Swasey
Notary Public

U. S. District Court.
for the Northern Dist of Calo.

Mariano G. Vallejo et al.
Respdts.

vs.

The United States
Appellant.

Affidavit of J. B. Frisbie

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U. S. District Court.

Vallejo's assigns
Respdt.

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vs.

The United States
Appellt.

I beg leave of the Court to submit some further authorities and points upon a question not directly discussed in my former argument. The power of the Governor to sell lands or grant them for meritorious services to the country without regard to limit.

It appeared to me in my examinations of the authorities that the Supreme Court of the United States had so clearly and distinctly passed upon this question that I should be excused from the argument of it, and I feel somewhat embarassed in the examination of so voluminous a question properly to condense my remarks so as not unnecessarily to fatigue the Court.

It was the fault of the old Board to have looked too closely at the legal rights of the claimants. To have considered whether the claimants had a title to the land claimed and not whether he ought to have one.

This seems to me to have been the object of

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the law constituting the Board and the Supreme Court in reversing so many of the decisions of that Board as well as in their former decisions under similar acts of congress have acted upon this main principle. Not so much enquiring whether the claimant already had a perfect title, as whether he had something which under the former government according to their customs and practices would have been perfected ~~into~~ into a title. Thus they say (6 Wheat 719) "if by either the one or more rules of decision thus prescribed we shall be of opinion that the title of the claimants was such as might have been perfected into a complete title under and in conformity to the laws of Spain if the sovereignty of the country had not been transferred to the United States &c &c we can decree finally on the title" and at page (721) "whether then the present claim is by patent, grant, concession, warrant or order of survey or any other act which might have been perfected into a complete title, by laws usages and customs of Spain is immaterial as to our power to hear and determine.

And speaking of the Florida Treaty they say page (720)

"The counsel of the United States

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have considered the merits of this case as resting mainly if not wholly on the eighth article of the treaty, but the law compels us to take a view of it much less limited. That article names only grants and if we decide alone on it, we must decree against the claim unless we think the title good under it though if it was for a quantity not exceeding a league square any other tribunal would confirm it. This would be making a distinction so unworthy a just legislature that we shall not impute to them the intention of directing it to be the rule of our action. We shall certainly not adopt it unless it is clearly imposed by the authority of law expressed in terms admitting of no doubt."

The documentary evidence presented in this case is perfect and unquestioned. The industry of a horde of squatters has not availed to discover one solitary witness who would question the validity and genuineness of the documentary evidence presented, or disprove the full payment of a most meritorious consideration fully proven by the claimant.

These documents are;

1st A letter from Gov Micheltorena declining the proposition made by General

Vallejo to take this land in payment for the arrears of his pay, for reasons which are very fully set forth in the letter but accepting his offer to purchase the land then known as "the National Farm" for a present consideration to be paid and giving full directions as to the manner of payment March 16th 1843

2nd A grant to him of the land in question in the usual form of colonization grants. This is dated the day before the Governors letter, is referred to in it and evidently remitted with it. "Remito a V. S. el titulo del parage numbrado Soscal &c"

3rd A grant of the same land dated 19th June 1844 reciting that Gen Vallejo, had petitioned for the purchase of Soscal

"enamento las delegencias y averiguaciones concernientes usando de las facultades con que me hallo investido por el Sup. Gobierno de la nacion Mejicana, he venido en vendole el expresado terreno de Soscal en la cantidad de cinco mil pesos que recibio este Gobierno a su satisfaccion declarandole la propiedad de el por las presentes letras en cuya virtud podra ocuparlo poseerlo libre y exclusivamente destinandolo al cultivo y cria que mas le acomode sin restriction alguna.

Por tanto mando que sirviendole de

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titulo el presente se tome razon de el en el libro respectivo y sea reconocido por todas las autoridades de los departamentos de la Republica entregandosele al interesado como propiedad particular comprada al Gobierno del Departamento en debida y legal forma &c.

It cannot be questioned that the grant is in due form, and upon its face shows:

1st A grant of the property in absolute dominion

2nd An authority to make the grant by faculties with which the governor has been invested by the Supreme Government of Mexico.

No objection appears to have been made to the admission of this paper in evidence, its genuineness seems not to have been contested no attempt was made to impeach it as antidated or forged and its due execution in all the forms known to the local government was unquestioned. It was therefore before the Court below and is so here, at least, prima facie evidence of a grant of the land it describes to the claimants, the rules of evidence and the principles of law give it this effect and so it must be considered. Here an important question arises, whether the several acts of congress relating to Spanish grants do not

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give this grant and all others which are complete and perfect in their forms "legally and fully executed" a greater and more conclusive effect as evidence of a grant by proper authority" 6 Peters 722.

"It is but a reasonable presumption that congress in legislating on the subject of Spanish grants in the three territories which they have acquired since 1802 and in devising and providing efficient means for ascertaining and finally settling all claims of title under them by persons asserting that the lands they claimed had been severed from the public domain before the cessions of the territories to the United States. That whilst they have by a series of laws from 1803 to 1838 authorized special and subordinate tribunals to decide on claims to the extent of a league square, inferior courts to decide on all claims to any amount, and finally if no appeal is taken, and this court to pronounce a final decree on appeal which may separate millions of acres from the common fund. They would have made what was deemed adequate provision to guard the public from spurious grants, by prescribing for the various tribunals authorized to decide on claims such rules of evidence as applicable to those grants as would

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secure the interest of the nation from fraud and imposition. Yet in their whole legislation on this subject (which has all been examined) there has not been found a solitary law which directs that the authority on which a grant has been made under the Spanish officer or submitted to any tribunal appointed to adjudicate its validity and the title it imparted, congress has been content that the rights of the United States should be surrendered and confirmed by patent to the claimant under a grant purporting to have emanated under all the official forms and sanctions of the local governments. This is deemed evidence of their having been issued by lawfull power and legitimate authority when unimpeached by proof to the contrary." (6 Wheat 732-3).

"The fact which gave to the recorded certificate of the commissioners the effect of a patent was the existence of a grant the legality and fullness of its execution only was required to be made to appear. no enquiry was directed to be made as to the authority by which it was done. The United States were too just to exact from the grantees of land under an absolute colonial government what no court requires from one who holds lands under the grants of the United States, viz a State fully

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executed, or if incohate never compels a claimant to produce the authority of the officer who issues or executes a warrant or order of survey. It is always presumed to be done regularly till the contrary appears or such reasons are offered for doubting its authenticity as are sufficient in law to rebut the legal presumption." (6 Peters 720.

"As no law required the exhibition of the authority under which a grant, warrant or order of survey was made as it formed a (no) part of the evidence of title to be recorded deposited or acted on by the Commissioners they were not authorized to call for it before their decision." (Ib).

"The grant legally and fully executed was competent evidence of the matters set forth in it and as none other was necessary it was in effect conclusive".

"Nothing can more clearly manifest the understanding of Congress that such grant &c was conclusive evidence of title and that the commissioners were not under the existing laws at liberty to require from the claimants any other proof than their conferring on them by express words the power of doing so (as to genuineness and not to date) Expressio unius est exclusio alterius is an

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universal maxim in the construction of Statutes
6 Peters 724. 725.

"Where the lands are claimed by virtue of a complete French or Spanish grant, as aforesaid it shall not be necessary for the claimant to have any other evidence of his title recorded than the original grant or patent together with the warrant or order of survey and the plot." Ib.

"The proof of validity must be understood of its genuineness and authenticity and that it is not fraudulent, so as to satisfy themselves as to those doubts which authorized them to require further proof than the grant itself of its legal full and fair execution not of the authority of the office who made it no law gives power to exact proof of that." Ib. 725.

"It is thus clearly evidenced by the acts the words and intentions of the legislature that in considering these claims by the special tribunals the authority of the office making the grant formed no item in the title it conferred, that the United States never made that a point in issue between them and the claimants to be even considered much less adjudicated. They was submitted to the principle which prevails as to all public grants of land or acts of public officers in

issuing warrants, orders of survey, permission to cultivate or improve as evidences of inceptive and nascent titles which is: that the public acts of public officers purporting to be exercised in an official capacity and by public authority shall not be presumed to be an usurped but a legitimate authority previously given or subsequently ratified which is equivalent. If it was not a legal presumption that public and responsible officers claiming and exercising the right of disposing of the public domain did it by the order and consent of the government in whose name the acts were done the confusion and uncertainty of titles and possessions would be infinite even in this country, especially in the States where tenures to lands depend on every description of inceptive, vague and inchoate equities rising in the grade of evidence by various intermediate acts to a full and legal confirmation by patent under the great seal" 6 Peters 727.

"The acts of public officers in disposing of public lands by color or claim of public authority are evidence thereof until the contrary appears by the showing of those who oppose the title setup under it and deny

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the power by which it is professed to be granted. Without the recognition of this principle there would be no safety in title papers and no security for the enjoyment of property under them. It is true that a grant made without authority is void under all governments. 9 Cr 99 5 Wh 502. but in all, the question is on whom the law throws the burthen of proof of its existence or non-existence. A grant is void unless the grantor has the power to make it, but it is not void because the grantee does not prove or produce it. The law supplies this proof by legal presumption arising from the full legal and complete execution of the official grant under all the solemnities known or proven to exist or to be required by the law of the country where it is made and the land is situated." 6 Petes 728.

This or no other court can require proof that there exists in every government a power to dispose of its property, in the absence of any elsewhere we are bound to presume and consider that it exists in the officers or tribunals who exercise it by making grants and that it is fully evidenced by occupation enjoyment and transfers of property had and made under them without any disturbance by any superior power,

and respected by all coordinate and inferior officers and tribunals throughout the State colony or province where it lies" 6 Pet 728.

"A public grant or one made in the name and assumed authority of the sovereign power of the country has never been considered as a special verdict."

"If admitted the court jury or chancellor must receive it as evidence both of the facts it recites and declares leading to and the foundation of the grant and all other facts legally inferable by either from what is so apparent on its face. Taking these as a settled principle that a public grant is to be taken as evidence that it issued by lawful authority we proceed &c" 6 Petes 729.

It is needless for me to follow the Supreme Court through its able and full examination of authorities showing the universal application of this principle, to patents of the United States, of Great Britain of the several States, of the colonies, to the warants, entries, permits &c. The mass of authorities accumulated by the court in the Arredondo case so completely settled the point that they have never considered it necessary to review it.

But the court in that case does pass

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an opinion after an examination of all the proof offered that outside of the authority of the grant itself the intendant or governor had the power to make the grant, and that the power was unlimited in respect to the quantity granted.

"It has been objected to the validity of the grant that it exceeds the quantity authorized by the laws of the province. The view we have taken of the royal order dated in September 1817 preceding the grant and by the authority of which it purports to have been made renders it unnecessary to say more in relation to this objection than that the disposition of the royal domain was within the jurisdiction of the intendant Ramirez. That he had the power to make the grant the terms and extent of which were within his discretion of the proper exercise of which this court has neither the power or rights to judge. We will however observe that we are well satisfied that the local authority was competent to make grants of land of a greater quantity than that to which the counsel of the United States have contended that they were limited, the United States have never insisted on limiting grants to such a pittance. Their uniform legislature and the proceedings of all the tribunals

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who have acted under their authority during all the time which has elapsed since the acquisition of any territory within which Spanish grants have been issued show that they have never been disposed to confine them so narrowly but the contrary This case does not require us to define their extent" 6 Peters 746.

And commenting upon the case of Fochs lessee vs Wendell 9 Cr 85 they quote with approbation" This act limits the amount for which an entry may be made, but the same person is not forbidden in this act to make different entries and entries were transferable. no prohibition appears in the act which should prevent the assignee of several entries or the person who had made several entries from uniting them in one survey and one patent 6 Peters 730.

This case & which has settled the point that the grant is presumptive evidence of the title, and that it lies with the government to show that the officer had not the power to make it.

It seems to me almost humiliating to have to argue that the titles of the prior masters of the country are as sacred as are

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our own. that the rights of property are just as sacred under a republican government as under a despotism, that the same faith and credit is due to the official acts of officers of the former government as of the present, and yet the whole dispute and question amount to nothing more. That was the question so fully argued in the arredondo case and that is really the question argued now. The court will I know concede at once the general principles, that all rights of property acquired under the former government are sacred, and are entitled to precisely the same protection as they would have been if that government had continued. But the practice is not so. To apply this course of proceeding to our domestic titles would cause a burst of indignation from one end of the land to the other it would provoke a revolution.

That the Supreme Court in the case of arredondo only asserted the rule of evidence which is applicable to all our own domestic official acts. I refer the Court in addition to those cited by the Supreme Court to the following. Patterson v Jenks 2 Peters 216. Blake v Dougherty 6 Wheat. 359. Easly v Fontaine 4 H & M 146. Paine v Bread 1 Chip 201. Carollen Towson 3 Har

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& J 155. 4 Har & McHen 287. Tolson vs Lanham 2 Har & J. 174. Stewart vs Donaldson 5 Har & J. 428. Duncan vs Beard 2 H & M. 401. Bond vs Quattlebaum 1 McLean 584. Roche vs Randell 5 Wheat 293 Jackson vs Mauch. 6 Cow 281. Ross vs Doe 1 Pet 655 Masters vs Eastis 3 Port 368 Jenkins vs Noel 3 Stew 60. Galt vs Galloway 4 Pet 332. Richardson vs Hobart 1 Stew 500 Hallett vs Easton 2 Stew 115 U. S. vs Arredo 1 How U. S. 24. 17 Pet 16 Proprietors of Enfield vs Daly 11 N. H. 520. Enfield vs Permit 8 N. Hamp 512. Jennings vs Whitaker 4 Mur 50. Ballard vs Bauman 5 Watts & Serg 150. Jones vs Ange 5 Post 527. Muni vs Cole Walker 119. Barry vs Gamble 8 Mis 88 Gallipot vs Meanlord 1 Scam 156 Jackson vs Wilcox 1 Scam 344. Staunton vs Powell 10 Ired 312. Winter vs Jones 10 Geo 190.

But it is unnecessary to add authorities to show that the principle asserted in the accedendo case was one universally recognized and of general application

The Court did not in the case undertake to examine very fully what were the powers of the Spanish governors. but they say" We will however observe that we are well satisfied that the local authority

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was competent to make grants of land of a greater quantity than that to which the claims of the United States have contended that they were limited. The United States have never insisted in limiting grants to such a quittance. Their uniform legislation and the proceedings of all the tribunals who have acted under their authority during all the time which has elapsed since their acquisition of any territory within which Spanish grants have been issued show that they have never been disposed to confine them so narrowly but the contrary. This case does not require us to examine their extent"

The Supreme Court of the United States did however undertake to ascertain the extent of the powers of Spanish Governors in making grants of land in the subsequent case of the United States vs Clark 8 Peters 436.

There was a royal order of the 29th Oct. 1790. which was recited in the grant to Clark avowedly made for the purpose of inviting foreigners into the province and Clark was an inhabitant and thus the court say did not authorize the grant

"It limited the quantity of land to be granted to a fixed number of acres for the workes that each family may have and it is not doubted that the quantity actually

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contained in the grant far exceeded the quantity authorized by that order. It is too plain for argument that if the validity of the grant depends on its being in conformity with the royal order of 1790 it cannot be supported. But we do not think it does depend on that order" 8 Peters 447, 448.

The court then setting this order aside place the validity of the grant upon a meritorious service rendered by the grantee and proceed to examine whether the governor had the power to make the grant. But first the court examines the provisions of the treaty of cession and says:

"These titles are to be valid to the same extent as if the territories had not been ceded. What is that extent? A grant made by a governor if authorized to grant lands in his province is prima facie evidence that his power is not exceeded. The connexion between the power and the governor justifies the presumption that he acts according to his orders, should he disobey them his hopes are blasted and he exposes himself to punishment. His orders are known to himself and to those from whom they proceed but may not be known to this world."

"Such a grant under a general power

would be considered as valid even if the power to disavow it existed, until actually disavowed. It can scarcely be doubted so far as we may reason on general principles that in a Spanish tribunal a grant having all the forms and sanctions required by law not actually annulled by superior authority would be received as evidence of title."

"We proceed then to enquire into the power of the governor of East Florida

"It will not be material to ascertain the rules by which lands were granted to the first settlers in America by the officers from whom the title emanated. So early as the year 1735 an ordinance was passed by which the king reserved to himself the right of completing the titles given by his provincial officers.

"The inconvenience resulting from this regulation was so severely felt that the ordinance was repealed in 1754 and the whole power of confirming as well as originating titles was transferred to officers in the colonies

The power of appointing sub delegate judges to sell and compromise for the lands and uncultivated parts of the dominions of the Spanish crown in the Indies was declared to belong to the viceroys and presidents of the royal audiences of those kingdoms and

the same royal order directed that "in the distant provinces of the audiences or where the sea intervenes as at Caracas, Havana, Carthagena, Buenos Ayres, Panama, Yucatan Cumana, Margarita, Puerto Rico and in others of like situations confirmations shall be issued by their governors with the advice of the officiales reales (the kings fiscal ministers) and of the lieutenant general hatendo, where he may be stationed.

In 1768 the power of granting and confirming titles to lands was vested in the intendants.

In 1774 it was vested in the civil and military governors." 8 Peters 401. 402.

The Court proceed to show that this general and unlimited power to grant lands continued thereafter to reside in the governor alone except in Louisiana and West Florida where it was vested in the intendant.

"It has already been stated that the acts of an officer to whom a public duty is assigned by his king within the sphere of that duty are prima facie taken to be within his power. This point was fully considered and clearly stated by this court in the case of Arredondo and the principles on which the opinion rests are believed to be

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too deeply founded in law and reason ever to be successfully assailed. He who would controvert a grant executed by the lawful authority with all the solemnities required by law takes upon himself the burden of showing that the officer has transcended the powers conferred upon him or that the transaction is tainted with fraud.

This the counsel of the United States undertakes to do. He insists that governor Coppinger has transcended his powers in making the title now under consideration for a larger quantity of land than he was empowered to grant and for a consideration not warranted by law." 8 Peters 452. 458.

The Court will perceive that the questions involved in the case of Clarke were precisely those involved here. The amount of land which could be granted to a colonist in consideration of settlement and improvement was limited. The amount granted to Clarke 1st exceeded that limit 2nd was for a meritorious consideration and not for colonization and settlement.

The objections of the United States were supported by Mr Call with great ability and research and I doubt not produced every authority that existed tending to show

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that the governor had exceeded his powers
But the court say:

"The royal order of 15th October 1754
confers this power in general terms without limi-
tations on the quantity, or on the considerations
which may move the grant. It would excite
surprise if in a monarchy like Spain no
rewards in land could be granted for extra
services and no favors could be bestowed.
Among the earliest laws for the government of
America (7th Comp 30) is an order that the
viceroys of Peru and Mexico grant such
rewards favors and compensations as to
them may seem fit, a subsequent order
(7th Comp 41) after directing extensive dispo-
sitions of territory, adds that all the remai-
ning land may be reserved to us clear of
any incumbrances for the purpose of being
given as rewards or disposed of according
to our pleasure. In 7 Whites Comp 29 we
find the following law: 'it is our pleasure
that services be remunerated when they shall
have been performed and in no other place
or province of the Indies.' It would seem
that these remunerations if in land would
be made by the governor when empowered
to grant them provided no other officer was
designated." 8 Peters 403. 404

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The Court then proceeds to show that there was no limitation by the crown, that all the limitations imposed were imposed by the governors themselves upon themselves as having absolute power over the matter and without any reference or allusion to any royal order or instructions. 8 Peters 454. 455, 456 457 &c.

"They did not consider these powers to be limited to small quantities but that they might exercise discretion in this respect." p 454

"The language of this letter is rather that of a man who has exercised his discretion in a subject to which his power extends than of one who might at once repel the application by referring to the orders of his sovereign" Ib.

"We dont find any limitations in the royal orders restricting the power of the governor to a league square in their grant." p 455

"This is most obviously the language of a man who supposes himself to possess full power over the subject. The rules he prescribes for himself do not purport to be limits imposed by a master, but to be marked out by his own discretion and to be alterable at will. He makes no allusions to orders emanating from his sovereign marking out the narrow path he is bound to tread, but gives the law himself in the character

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of a man invested with full power. p. 455.

"These regulations do not measure his power but give the law to those who are to execute his orders. p. 457.

"Mr White says page 9 I sought assiduously but have been unable to discover a record or notice of the proceedings upon some grant or concession which had been made by a captain general, intendant or governor and disapproved by the king. I have been unable to ascertain whether any such exists p 458.

These extraordinary regulations were in the exercise of that power to which general laws had been adapted. The right to bestow rewards on those individuals who had rendered any particular service constituted a distinct branch of power to which their general laws could not apply. p. 459.

And commenting upon the letter of Don Nicholas Garrido to the governor and the answer to it. the Court say.

"These questions are asked by the agent of the Duke of Alleyn a favorite of the king. They relate exclusively to those large grants which are now said to have exceeded the power of the governor. They were of

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cause known to the Duke of Allegon and we must presume to his master. Yet an excess of authority is not even suggested. No doubt seems to be entertained of the validity of those which had been completed by the grant of a full title or of those still incomplete the conditions of which have been performed." 8 Pet. 460.

And Ruperto Saavedra in his answer says; "those who have title of proprietorship who have complied with the conditions pointed out to entitle them, to them or have obtained them as a remuneration for services or other considerations deemed by the government sufficient for the purpose, in these cases there is a precise obligation to respect said titles" page 460.

It is apparent that both the agent of the Duke and Saavedra considered these large concessions as within the power of the governor." page 461.

We dont consider it necessary to follow through the very thorough examination made by them. The conclusion to which the Supreme Court arrived in that case was, that the power of the governor to grant lands to an individual for particular services was unlimited"

In the cases of U. S. vs Richards 8 Pet 470 U. S. vs Nuevitas 8 Pet 475 U. S. vs Gover-

8 Peters 477. Similar decrees were made. In the last case it is said. "The concession is for services and is unconditional" U.S. v Henrys heirs 8 Pet 478 U.S. v Lesi 8 Pet 479 U.S. v Garcia 8 Pet 484. U.S. v Hernandez 8 485 are to the same effect. In U.S. v Huertas 8 489. the Court say; "It having been decided that the land might be granted for meritorious services the governor must necessarily judge of them and the full title acknowledges that the conditions of the concession which was made by Governor Puiddan in October 1814 had been complied with" other cases in the same volume are to the same effect.

In the case of the United States v Moore 12 Howard 209 the Supreme Court go into an historical examination of the powers of the governd and intendant of Louisiana and in that case the claim was rejected principally because the claimant had slept so long upon his rights but the Court also decide that the power to sell lands was at the date of the pretended purchase in the governor and not in the intendant. But the power of the governd to sell is distinctly recognized and asserted.

In the cases of Garcia v Lee, 12 Peters 512 the United States v Reyes 9 How 127 the United

States v D'Autenere 10 How 609 The claims were rejected because the grants were made by the French authorities after the territory was ceded to Spain, but in all of them the right of the govern to sell lands is conceded In the case of the U. S. v Castans 12 vols 12 How 458, the power of the Governments to make grants is again asserted and the Bill in the case was dismissed because the claimants had a perfect title.

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In the United States v Hughes 13 How 1 Same v Same 13 How 5 Same v Same 13 How 7. the claims were rejected for staleness but the right of the govern to grant was not questioned.

In the case of Glenan v The U. S. 13 How 250 the power is again affirmed.

In the case of Soulard v the U. S. 10 Peters 100, which was a grant made by the Lieutenant govern of Upper Louisiana the Court say;

"To the confirmation of this title various objections were made on the ground that such concessions was not authorized by the laws of Spain, but as they have all been fully considered and overruled in the various cases which have been decided by this Court in claims to land in Florida under the treaty with Spain and in Missouri under the treaty with France and the various acts

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of Congress on this subject it is deemed unnecessary to notice them. To the surveys no objections have been made if the concession is valid of which there can have no doubt consistently with the principles heretofore established by this Court. 10 Pet. 100.

In the Case of Glenn and others vs the U.S. 13 How 250, the Court says:

"And this brings us to the question as to what right was acquired by the concession, according to the laws and ordinances of the Spanish Colonial Government, existing and in force when the grant was made. By these the Commandant Delassus had authority to contract and give concessions and make orders of survey by joint decrees either with or without conditions as this court held in the case of Soulard vs The United States 10 Peters 114 provided the concession was founded on a consideration prima facie good either past when the concession was made or to follow in future" p 257.

It is unnecessary to follow the cases further. They have clearly established as law beyond the possibility of a review that at the Spanish colonial governors had the power to sell or grant lands for a consideration or for a special or peculiar merit or services

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2nd That this power was unlimited in its respect to the extent of land that could be granted
3rd That this power was wholly irrespective and independant of the power to grant lands for colonization and was in no way affected or controlled by the regulations of colonization
4th That the governor was the sole judge of the adequacy of the consideration and his decision is not open to review. 5th That the Grant is evidence of the power of the grantor and of all the matters of fact which are therein recited.

If the present was a grant from a Spanish colonial governor then it would seem that the question is decided and all the questions involved in this case. It follows that it must be assumed that there is a difference between the grant of a Mexican Governor and a Spanish governor.

It appears very clear that the Supreme Court of the United States do not recognize any distinction and are under the impression that they have decided these cases.

In my former brief in this case I examined the history of Mexican Legislation and endeavored to show and think I did successfully that the revolution and independance of Mexico merely changed her political constitution, and that all the laws of Spain

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which were in force in Mexico, at the date of the change of government, continued in full force and vigor except so far as they were repugnant to the new constitution or inconsistent with laws of Mexico, subsequently passed, and that these laws of Spain and the Indies constituted the Common Law of Mexico, the basis or foundation upon which all her subsequent legislation rests. I shall not reexamine the question here but shall assume that.

The plan of Iguala adopted on the 24th of February 1821, declared the equality of the inhabitants of Mexico. The treaty of Cudova Aug 24th 1821 establishes the independance of Mexico, and the declaration of Independance was made Sept 28th 1821. (Picton case 17 How 538. These acts in no way alter the laws of Mexico.

That the powers of the governors continued as before in the opinion of the Supreme Court is decided in the case of Beralta 19 How 343

In that case the title to a part of the claim rested upon the grant of a Spanish governor but the residue depended upon the grant of a Mexican governor. Solar the Spanish governor upon the protest of the missions had contracted the claim and made his grant for less than

was petitioned for, and the grant of Gov Sola was not made until after the change of government, 18 Aug 1822. The additional grant was made by Gov Arguello in 1827, and these title papers having been lost Micheltorena gave them a new grant in 1844.

In the opinion of the Supreme Court all these official acts are valid

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The decision in the Arcadio case is affirmed in its application to this class of cases.

"We have frequently decided that the public acts of public officers purporting to be exercised in an official capacity and by public authority shall not be presumed to be usurped, but that a legitimate authority had been previously given or subsequently ratified."

To adopt a contrary rule would lead to infinite confusion and uncertainty of titles. The presumption arising from the grant itself makes it prima facie evidence of the power of the officer making it and throws the burthen of proof on the party denying it." 19 How 347.

And they also declare that the decision made by them in Clarkes case 8 Peters 436 is applicable to these grants.

"The general powers of the governors and other Spanish officers to grant lands within

the colonies in full property and without restriction as to quantity and no reward for important services were fully considered by this court in the case of the United States vs Clarke" 8 Pet. 436

The objection was distinctly raised in Peraltas case that the governor had no power to make the grant and the Court overruled the objection. p. 547 and they further say;

"The appellants on whom the burthen of proof is cast to show want of authority have produced no evidence either documentary or historical that the Spanish officers who usually acted as governors of the distant provinces of California were restricted in their powers and could not make grants of land. The necessity for the exercise of such a power by the government if the Crown desired those distant provinces to be settled is the greater because of their distance from the source of power. By the royal order of August 22 1776 the Northern and Northwestern provinces of Mexico were formed into a new and distinct organization called the internal provinces of New Spain. This organization included California. It conferred ample powers civil military and political on the Commandant general. The archives of the former government also show

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that as early as 1786 Governors of California had authority from the Commandant general to make grants limiting the number of a sitios which should be granted. In 1792 California was annexed to the Vice Royalty of Mexico and so continued till the spanish authority ceased. An attempt to trace the obscure history of the various decrees orders and regulations of the Spanish governors on this subject would be tedious and unprofitable. It is sufficient for this case that the archives of the Mexican government show that such power has been exercised by such governors under Spain and continued to be exercised under Mexico and that such grants made by the Spanish officers have been confirmed and held valid by the Mexican authorities. Sola styles himself political and military governor of California. He continued to exercise the same powers after his adhesion to the Mexican Government, under the provisions of the plan of Iguala, and the twelfth section of the treaty of Cuidad. The grant in fee by sola was after the revolution."

"The government of Mexico since that time has always respected and confirmed such concessions when any equitable or incohate right followed by possession and cultivation had been conferred by the governa-

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under Spain."

The case of Arguello (18 How 540) was that of a permit by governor Sala afterwards confirmed by the Mexican Government and by this Court. The plaintiff in error has not been able to produce anything from historical documents on the archives of California tending to show a want of power in the respective officers in the case, on the contrary, the presumption of law is confirmed by both. The order of Micheltorena in 1844 for the granting the new title to Peralta is itself evidence of the usage and custom and that the acts of Sala and Arguello were considered valid and that the title whether equitable or legal, conferred to them should be respected and confirmed by the government." (19 How P. 347. 348.)

And the confirmation to the portion in dispute is particularly grounded on the concession of Arguello in 1827 confirmed by Micheltorena in 1844 P. 349.

Here is a positive and direct decision that the Mexican governors had power irrespective of the Decree of Colonization of 1824 to grant lands in consideration of patriotic services to a citizen unlimited in extent.

In the case of Sutherland 19 How 363 the Supreme Court use this language at

page 564." Eleven of these leagues was the usual extent for a rancho grant. If more or less was intended in the grant, it was carefully stated." This certainly recognizes the power to grant more than 11 leagues.

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In the case of Arguello 18 How 539 the court say page 547. ~~that under the Spanish~~ government, the governors had authority to make grants of lands to Mexican citizens families or single persons while grants to impressarios or contractors required the sanction of the king.

In the Fremont case the petition which was for 10 leagues expressly sets out that the Petitioner already had one Rancho, but no objection was made to the extent of the grant, and the Court says: "there can be no question as to the power of the governor to make the grant." 17 How 557. and the fact that it was made in consideration of patriotic services is set forth as giving additional weight to the claim.

"And the grant was not made merely to carry out the colonization policy of the government but in consideration of the previous public and patriotic services of the grantee. This inducement is carefully set forth in the title papers. And although this cannot be considered as a money consideration making

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the transaction a purchase from the government yet it is the acknowledgement of a just and equitable claim and when the grant was made on that consideration, the title in a court of equity ought to be as firm and valid as if it had been purchased with money on the same conditions. p. 508.

"It is proper to remark that the laws of these territories under which titles were claimed were never treated by the court as foreign laws to be decided as a question of fact. It was always held that the Court was bound judicially to notice them as much so as the laws of a state of the Union. In doing this however it was undoubtedly often necessary to enquire into official customs and forms and usages. They constitute what may be called the common or unwritten laws of every civilized country. And when there are no published report of judicial ~~proceedings~~ decisions which show the received construction of a statute and the powers exercised ~~under it by the tribunals~~ or officers of the government it is often necessary to seek information from other authentic sources such as the records of official acts and the practice of the different tribunals and public authorities and it may sometime be necessary to seek information from private

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individuals whose official positions or pursuits have given them opportunities of acquiring knowledge. But it has always been held that it is for the Court to decide what weight is to be given to the information obtained from any of these sources. It exercises the same discretion and power in this respect, which it exercises when it refers to the different reported decisions of State Courts, and compares them together in order to make up an opinion as to the unwritten law of the State or the construction given to one of its statutes" 17 How p 587.

From these authorities it appears to me clear that the Supreme Court of the United States hold

1st That the grant of a Mexican governor has the same force and effect as evidence of title as the grant of a Spanish governor

2nd That the Mexican governors subsequent to the revolution had the same power to make grants of land that they had under the government of Spain.

3rd That as such governors their power to grant lands to Mexican citizens for a valuable consideration was unlimited.

4th That the recital in the grant of the receipt of such consideration is plenary proof thereof.

The next enquiry naturally is whether the power of the Mexican governors was

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abridged by the Decree of colonization?

It would naturally follow as a necessary consequence, if the power of the governor to grant was dependant upon the Decree of colonization that he could only grant upon the precise considerations with the particular conditions and in the exact form pointed out ~~in the~~ and authorized by that decree. If it is not so. If he makes grants without regard to those conditions and forms it must be that he possesses the power to grant entirely independant of that decree, and that the object and intent of this decree must be something different. Not a grant of power or a measure of it generally, but a limitation in a particular class of cases.

That he is not bound by the exact letter of that decree appears clear from the cases already cited. In the grant to Alvarado the Court say: "The grant was not made merely to carry out the colonization policy of the government. (1 Howe p. 558) and they say (p. 561.)" according to the regulations for granting lands it was necessary that a plan or sketch of its lines and boundaries should be presented with the petition, but in the construction of these regulations the governor appear to have exercised a discretionary power

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to dispense with or under certain circumstances. It was not required in the present instance. The reason assigned for it in the petition was the difficulty of preparing it, the land lying in a wilderness country on the confines of the wild Indians. The reason was deemed by the governor sufficient and the grant issued without it, and in deciding upon the validity of a Mexican grant the Court could not without doing injustice to individuals give to the Mexican laws a more narrow and strict construction than they received from the Mexican authorities who were entrusted with their execution. It is the duty of the Court to protect rights obtained under them which would have been regarded as vested and valid by the Mexican authorities, And as the governor deemed himself authorized to dispense with the usual plan and his decision in this respect was sanctioned by the other officers intrusted with the execution of the laws it must be presumed that the power he exercised was lawful and that the want of a plan did not invalidate to the grant."

Now the limitation of extent was no more a part of the colonization regulations than the requirement of a map. The same might be said in regard to the restriction concerning

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the 10 littoral and 20 boundary leagues and the 17th section concerning Mission lands.

But I feel perfectly satisfied that the Decree of colonization had nothing to do with grants to Mexican citizens and was no restriction upon the governors powers to grant lands to them. Assuming that the power of the governor to make grants to citizens was unlimited at the date of said decree according to all rules of statutory construction it will be necessary to find some words in that decree directly taking away that power or absolutely inconsistent with its exercise. If both can stand consistently together then both must stand.

It has already been shown that at that date the power to grant lands to citizens was unrestricted in the governor but the power to grant lands to foreigners "Colonists" required the sanction of the Supreme government.

I think it will clearly be seen upon examination of the Decree of colonization that the subject of that decree is the power of granting to colonists, and that the power to grant to citizens forms no part of the subject of the law, and that so far from abridging the power of the governor, it extends it to a subject matter which before that time was vested in the Supreme government.

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It is entitled "a decree of colonization" and the first section answers its object. The Mexican nation offers to foreigners who shall come to establish themselves in its territories security in their persons and property provided they subject themselves to the laws of the Country." These are the colonists

The second section declares "Those lands of the nation which not being private property nor belong to any corporation or town may be colonized."

The 3d section directs the Congress of the States to form laws "to this effect." The 4th section reserves the border and littoral leagues. 5th Reservations for government works. 6th No duty to be imposed on the colonists 7th Congress shall not prohibit immigration of foreigners 8th government to take measures of precaution against the foreigners who come to colonize. 9th Mexican citizens to be preferred in the distribution of lands. 10th Military land warrants may be located. 11th The supreme executive may alleviate for certain military rewards. 12th The limitation of quantity." 13th The settlers shall not transfer as inalienable 14th Contracts of empresario with families guaranteed by the government. 15th No one who by virtue of this law shall acquire lands in ownership shall be able to preserve them being domiciled without the territory of the republic." 16 The government conformably to the principles

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established in this law. shall proceed to the colonization of the territories of the Republic."

It will be perceived that the whole object intent and purpose of the law is to provide for the introduction of foreigners who should come to settle as colonists and to hold out inducements to them by providing for grants of land to them by the local governors. all the sections which grant rights or powers refer exclusively to this purpose and object.

The provisions inserted in favor of the Mexican citizens, holders of military land warrants and grants by the general government for meritorious services are by way of reservations simply that the grants of land to foreigners now first permitted to be made by the local governors should not be made to the prejudice of native citizens.

The 15th section which forfeits the land for non residence where the title is acquired under that law is meaningless or unjust if the law has any other interpretation but with that interpretation it is perfectly sensible and consistent.

It will be perceived that the law does not purport to take away any power previously existing. it was purely an enabling statute. It is nowhere ~~declared~~ declared that lands can be granted only under that statute, but it leaves in the hands of the governor all the power which

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the previously had untouched.

That such is the construction which the Supreme Court put upon the law is clearly manifest.

In the case of Arguello 18 How 539. at page 547 the court say;

" It is evident from an inspection of this act of 1824 and subsequent regulations of 1828 that they contemplate two distinct species of grants, 1st Grants to impresarios or contractors sometime called pobladores who engaged to introduce a body of foreign settlers, 2nd The distribution of lands to Mexican citizens, families or single persons.

While these countries were under the dominion of Spain the governors had authority to make grants of the latter description while those of the former required the sanction of the King As examples of such colonization contracts in Louisiana those of the Marquis of Maisonrouge and the Baron of Bastrop may be referred to They came under the consideration of this Court in the cases of the United States vs King and Cox 7 How 833 and the United States vs Philadelphia 11 How 419 These contracts were executory They designated a certain tract of land as proprietas to be gratuitously distributed among the colonists, but did not confer an absolute or immediate title to the whole tract to be colonized by the contractor, as the

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object of these grants was to obtain a body of foreign agriculturists who would settle together under one common leader, in whom the government could confide liberal terms were offered. a body of such colonists besides opening cultivating and improving the wild lands served as a protection against the Indians, and created inducements to others of their countrymen to join them and thus promote the early settlement of the province."

"The same policy was pursued by the Mexican government. Besides the desire of fortifying themselves against apprehended attempts at subjugation by Spain, they had before their eyes the prosperous growth of the United States consequent on the liberal encouragement of European immigration. But while anxious to encourage immigration of foreigners they nevertheless entertained some jealousy well founded perhaps that in case of conflict with a powerful neighbor their sympathies and allegiance might not be safely relied on."

"Hence the caution exhibited in requiring the approval of the Supreme government to grants made to empresarios for them to colonize with many families. But while a judicious policy might forbid the settlement

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of large bodies of foreigners on the boundaries and sea coast we cannot impute to them the weakness or folly of confining their native citizens to the interior and thus leaving the seacoast comparatively defenseless without population on the contrary the same considerations of policy which excluded foreigners would encourage the settlement of natives within those bounds. The Statute books of Mexico abound in acts offering every inducement to Mexican families to settle on the frontiers proffering gratuitous grants of land and agricultural implements. expenses of their voyage, maintenance for a year and leave to import certain articles free of duty. The military posts in the territory were on the sea coast and it would be strange policy indeed which would isolate the Posts intended for the protection of settlers and compel them to dwell among the savages, without protection. Numerous enactments also exhibit their cautious jealousy with respect to foreigners and especially their exterminus neighbors on the North An act of 1828 directs all spaniards living on the coast of the Mexican gulf to retire 20 leagues from it, another of 1830 prohibits settlements of foreigners from the contiguous nations, or any part of their border states."

"A careful examination of this decree of 1824 and regulations of 1828, will show that their

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letter conforms to this policy pursued with so much solicitude. The title to the decree shows its subject to be colonization. The term "colonization" implies immigration in numbers. The first section speaks of the subjects of such colonization as foreigners. It guarantees to them security of persons and property. The second and third describe the lands open to such colonists and requires the States to make rules and regulations for colonization within their limits. The fourth (whose construction is now under consideration) forbids the colonization of the territory comprehended within ~~twenty leagues of the boundaries~~ of any foreign State and within ten leagues of the sea coast, without the consent of the Supreme Executive power. The sixth section provides that no duty shall be imposed on the entrance of the foreigners. The seventh forbids the immigration of foreigners to be prohibited prior to 1840 except of some particular nation and under peculiar circumstances. The seventh indicates the possibility that the government may find it necessary to take measures of precaution for the security of the confederation with respect to foreigners who come to colonize. These are all the sections of the act which refer directly to the subject of colonization. The

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subjects of it are called foreigners throughout.
These are the only persons to whom the forth section has any reference or application. The Ninth section first speaks of the distribution of lands to individuals and families as distinguished from colonists and provides that Mexican citizens should be preferred without distinction of classes except as to those who have rendered special services to their country. Thus we have seen that the first eighth sections apply wholly to colonists and foreigners. It would be contrary to every canon of construction to apply the provisions made for them to the object introduced for the first time in the Ninth section, or to select the fourth section as applicable to native citizens while the other seven are confined by their terms to foreigners.

The regulations of 1828 made for the purpose of carrying into execution the law of 1824 evidently gives this construction to that act. It makes a clear distinction between empresario contracts for colonization and grants to Mexican citizens. In conformity with the forth section of that act it requires grants to empresarios to have the sanction of the Supreme Government, while those made to individuals or families need only the approval of the territorial deputation.

This may be said to be a legislative construction of the act of 1824 and demonstrates that this restraint of grants within the littoral leagues had no application except to colonies of foreigners"

"If anything further were wanted to justify this construction the uniform practice of the territorial governors to make grants to individuals and families within those bounds would be conclusive"

"The petition of Jimeno in 1840 praying the governor to apply to the Supreme government for a confirmation of those grants confirms the views we have taken. It shows what had been the antecedent practice on the subject and that although Jimeno had doubts about its legality others had not." 18 How 547. 548. 549.

And in the subsequent case of Cruz Cervantes 18 How 558. where the grant was of Mission land the Supreme Court decided that grants made of these lands to citizens were not granted ~~for colonization~~ for colonization and therefore the restriction of the 17th section did not apply to them. They say:

"The 17th section of the regulation of 1828 forbid lands "occupied" by Missions from being made the subject of colonization grants.

for the present &c, and can therefore have no application to lands not so occupied and not made the subject of colonization" p. 355.

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In the Peralta case the grant was for 15 leagues, and an objection was made on the ground of the extent of the grant but the Supreme Court declared it untenable. It is true that there was a grant made before the colonization act of 1824 but this was lost and the title produced was a grant from Micheltorena in 1844 and the decision is placed as much in the authority of the title as the priority of Sola and Arguello. In regard to the objection made in regard to the size of the claims and probably somewhat in reply to the opinion of a dissenting Justice they hold language which may well be applied to all these grants.

"In construing grants of land in California made under the Spanish or Mexican authorities we must take into view the state of the country and the policy of the government. The population of California before its transfer to the United States was very sparse consisting chiefly of a few military posts and some inconsiderable villages. The millions of acres of land around them with the exception of a mission or a rancho were for years unoccupied & uncultivated

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and uncultivated. It was the interest and the policy of the King of Spain and afterwards of the Mexican Government to make liberal grants of these lands to those who would engage to colonize or settle upon them. Where land is plenty and labor scarce pasturage and raising of cattle promised the greatest reward with the least labor. Hence persons who established Ranchos required and readily received grants of large tracts of country as a range for pasturage for their numerous herds. Under such circumstances land was not estimated by acres or arpens. A square league or "sitio" de ganado mayor" appears to have been the only unit in entertaining the superficies of land. Eleven of these leagues was the usual extent for a Rancho grant. If more or less was intended on the grant it was carefully stated. Surveying instruments or surveyors were seldom to be obtained in distant locations. The applicant for land usually accompanied his petition with a diseño or map, showing the natural boundaries or monuments of the tract desired. These were usually rivers, creeks, rivulets, hills and mountain ranges. The distance between these monuments were often estimated

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at about so many leagues and fractions of this unit little regarded. To those who deal out land by the acre such measurements as hills, mountains &c, though first would appear rather as vague and uncertain boundary lines. But where land had no value and the unit of measurement was a league, such monuments were considered to be sufficiently certain. Since this country has become a part of the United States these extensive rancho grants which then have little value have now become very large and very valuable estates. They have been denounced as enormous monopolies pinicedons &c and this court have been urged to deny to the grantees what it is assumed the former government have too liberally and lavishly granted. This rhetoric might have a just influence when urged to those who have a right to give or refuse. But the United States have bound themselves by a treaty to acknowledge and protect all bona fide titles granted by the previous government and this court have no discretion to enlarge or curtail such grants, to serve our own sense of property or defeat just claims, however extensive by stringent technical rules of construction to which they were not originally subjected" Sutherlands case 19 How 364, 365

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That the governor had power to grant in reward of meritorious services is expressly stated by the Supreme Court in the case of The United States vs Larkin 18 How 562.

"But there is nothing in the decree of 18 August 1824 of the Mexican congress or in the regulations of the 21st November 1828 forbidding such grants, on the contrary it is known to be the usual mode of remuneration to an officer of the government for meritorious public services."

Having shown that the governor at the date of the Decree of 18th August 1824 had the power to grant land in reward of public services or for a consideration moving from the grantee to the government, in unlimited extent. I think I have now shown conclusively that this power was in no way affected by that decree but remained in full and unrestricted vigor.

The documents produced in evidence whose authenticity are unquestioned show that the governor did grant the land in question to Vallejo for a large sum then paid to him for the public service in ready money and supplies to the army. Of all these facts the grant and other documents are plenary proof.

It will hardly be denied that the service rendered by Vallejo to the government was one of the most valuable character and the consideration was an ample one for the land at the date of the grant. The letter of Gov Micheltorena shows the straits to which he was then reduced and the absolute necessity in which the government found itself at that time of relief from some quarter. His troops unpaid, his treasury empty, harassed by enemies and unable to continue his march onto carry on the government for the want of supplies where was he to seek for them? The revenue of the country was unproductive, its trade and industry paralised. In such a strait Gen Vallejo comes to the rescue. What service could have been rendered to the government more valuable or more welcome? Can it be supposed that the Mexican government would have hesitated to confirm a concession made for such a public service? And is our government to stick upon quibbles and technicalities when called upon to do what that government should have done and undoubtedly would have done. This is what the Supreme Court say that we are bound to do. To act as the Mexican government judging from its usages and practices would have done

and" not to defeat just claims however extensive by stringent technical rules of construction to which they were not originally subjected."

I have not considered it necessary to cite to the Court the instructions and powers given to Micheltorena by the dictator Santa Anna. They are well known to this Court and I content myself with referring the Court to them. I consider them as conferring on Micheltorena all the powers so far as regards California which the dictator himself possessed in Mexico. And what were those powers? What were the powers of a dictator? by the Bases of Jacubaya Was there any limit to them? Were not all the powers of government reposed in his hands? Had the King of Spain more absolute powers than he. Under these powers Micheltorena did in fact exercise unlimited authority, as the Court well know. One of his decrees, having no other authority than his own mere will changed the municipal government of all the towns in California. He declares that he has concluded to put the law concerning pueblos in force with certain modifications and then proceeds in a long decree to assign the municipal government of each town, and that he does by his simple will giving no other reason or authority

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except the plenary powers with which he was invested and this Court is aware and are bound to notice that on his return to Mexico, so far from there being any disproval of his acts he was rewarded with the highest honors.

The court might well say in regard to his acts as the Supreme Court say in Clarke's case.

"The connexion between the crown and the governor justifies the presumption that he acts according to his orders should he disobey them his hopes are blasted and he exposes himself to punishment. His orders are known to himself and to those from whom they proceed but they may not be known to the world."

Had the Mexican government, having enjoyed and had the full benefit of the supplies furnished and perhaps saved the government thereby and continued its power, disavowed the grant, without returning the consideration paid it would have been an act, more disgraceful than any that ever disgraced its history.

The very adhesion of Vallejo to the government was itself a column of power. He had been in the government service since he was ten years old without an intervening he was at the time the commandant of the

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of the Northern frontier with an army of well drilled troops under his command and at his back the whole indian population commanded by Solano Herras and for many years had been more powerful than the government, for his power was permanent while there was a constantly changing and I may say without hesitation that the governors of California held their offices and power by his sufferance. His countenance itself in such troublous times was a public service to the Dictator of the greatest moment, and when accompanied as it was by material aid as well as sympathy, did more, must have done more to consolidate the power of Santa Anna than all other things conspired. It may have preserved and probably did preserve California to Mexico, thereby enabling her to receive millions of dollars from the United states. Millions which have been the means of preserving his existence as a nation. For Santa Anna to have disavowed the act which rewarded such services would have been the blackest ingratitude. Can the court doubt the sanction of that government? and if not has this court the right to ~~do so~~, withdrew its sanction?

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I have omitted to comment in its place upon the section restricting the grant to eleven leagues. The Coutncil perceive that the restriction is not on the power of the government to grant but upon the grantee to take "It shall not be permitted to unite in one hand as property." Now it cannot be pretended that it was the intention of the law to prevent a citizen from acquiring more than eleven leagues of land. Such an enactment would have been an invasion of the rights of property Every one owning lands in fee certainly had the right to sell, but how could he sell if no one was allowed to purchase, and who was to purchase? Those who had no land? Could not the government itself sell its lands, and if so to whom was it to sell to those who had no lands? What was the wealth of the country? Was it not in lands? The whole industry of the country was agricultural. There was no wealth except that which was derived from land There were none who had means to purchase with except them who had lands. It was only from that source that they could derive means to purchase. The land owners must necessarily be the purchasers. And clearly the government did not intend to shut itself out from the

possibility of selling to its own citizens. Yet such is the language of the law. "It shall not be permitted to unite in one hand"

Taking it in such a sense it becomes absurd and neither this Court nor the Supreme Court ever considered it any objection to a confirmative that the grantee or claimant or those through whom he claimed had then or at some time had held at the same time more than 11 leagues of land. Pio Pico, Vallejos, Castro, Peralta, and many others had far more than that quantity and those I have mentioned received it direct from the government. Was the government then in a constant violation of its own law. Is there a reasonable construction of the law sanctioning this practice? To me it seems that there was. That the section has no reference to any thing but impressario grants, the subject of the ~~law~~. The object of the government was to colonize.

To effect this object it was necessary that the land should be sufficient to permit the impressario to devote his attention to it and make it worth his while. But to permit one empressario to undertake more than he could perform with due alacrity, would only serve to hinder colonization, and if carried to excess,

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might amount to a monopoly and exclude others from entering into the business of colonization who were ready and able to embark in it. Considered as a simple colonization regulation the restriction is perfectly consistent not only with the practice of the government, but with the object and purport of the land.

I cannot see that there can be any impropriety in the Court looking somewhat at the circumstances of the case now. They are aware from the boundaries of the grant as set forth in the Record. They are bound to take judicial cognizance of the facts that within those bounds upon the faith of a title confirmed by the Board, there have grown up two cities Benicia and Vallejo each of which have been the capital of the State each surrounded with its back country of hard working farmers and graziers, that all the employees of the United States at the Navy yard and works live upon this ranch and own severally their little plots of ground That the great works of the Pacific Mail Company are there. That the most extensive nursery in the State is there. That the Barracks and the head quarters of the Pacific division are there, upon the faith of a title whose good faith is unquestioned millions of dollars have been expended upon this

ranch. The action of the government itself in itself becoming the first purchaser and locating its own military post there and erecting valuable buildings after a thorough examination of the title by the attorney general of the United States, has given it the stamp of government approval. Our title to the spot where the barracks stand is no better than it is to the rest of the ranch, and a private individual so purchasing would be estopped to dispute it. But at all events after such a declaration by the United States attorney general that the title was good, and a confirmation by the Board of Land Commissioners where no question was or ever had been made as to the genuineness of the title, people had a right to build cities upon the land, to expend twenty millions of dollars, to purchase and improve large farms, to build works, to buy out entirely the original grantees as they have done trusting that the government would not at this late day seek to defeat their title "by a construction of a Mexican law more stringent and technical than the Mexican authorities were disposed to give to it."

This court should not reverse a judgment

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to reach a conclusion so unjust inequitable and disastrous and I may say involving such bad faith.

I might add many other reasons and considerations why this grant should be confirmed but I feel that I have already trespassed too long upon the patience of the Court, but the importance of the case demanded from me a patient investigation and I rely upon the acknowledged courtesy of the Court if I have taxed its indulgence unwarrantably

All of which is respectfully submitted.

Brooks.

for Claimants

U. S. District Court.

Vallejo and Assigns

Respondt.

vs

The United States

Appellant

Brief.

B. S. Brooks

atty for Respds

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At a Stated Term of the District Court of the UNITED STATES OF AMERICA, for the Northern District of California, held at the Court Room, in the City of San Francisco, on the day of March in the year of our Lord one thousand eight hundred and fifty-seven.

Present:

The Honorable OGDEN HOFFMAN, *District Judge.*

The United States
appellant
v
Mariano G Vallejo & als
Respondents

No 318
Socal

This cause having come on to be heard at a stated term of this court on appeal from the final decision of the Board of Land Commissioners appointed under the provisions of the act of Congress of the 3d of March 1851 "to ascertain and settle the private land claims in the State of California" upon the transcript of the proceedings decision and evidence on which the said decision was founded and upon the further evidence and testimony taken in this court and it appearing that said transcript has been duly filed according to law and counsel for both parties having been heard on motion of B. S. Brooks Esq of counsel for the claimants it is ordered adjudged and decreed that the decision and decree of the said Board of Land Commissioners be in all things affirmed and that the claim of the claimants be and the same hereby is confirmed

The lands of which confirmation is hereby made is situated in the County of Solano and called Soscol and bounded as follows viz. On the north by lands named Tucay and Suisun and on the east and south by the Straits of Carquinez and Estero de Napa reference being had to the grant and Map and the deposition of O'Farrell on file in this case which includes the Island which is situated near the point in the middle of the Straits of Carquinez and between the Bays of San Pablo and Suisun

United States District Court, Northern District of California.

The United States
a Plaintiff
vs.
Rs. G. Vallejo et als
Defendants

ORDER.
Final Decree of Confirmation

Filed 185

Clerk.

By Deputy.

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No 1.

United States vs M. G. Vallejo } In the U. S. District Court for the Northern Dist: of the State of California

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City & County of San Francisco } ss

C. M. Chamberlain of the City & County of San Francisco being sworn saith that he has been employed by a large number, to Wit: Twenty or Twenty five persons who reside & have taken up claims on the Ranch known as the "Suscol Ranch" in the State of California to procure a rejection of the claim or title to said Ranch the same being supposed by said persons and many others residing thereon to be illegal and fraudulent. That a trial of said claim has been had before the Hon: Court but no decision rendered, the same being held under advisement, That since said trial material and important evidence has come to the knowledge of said Deponent by and through the information of certain persons, which in the opinion of this Deponent if introduced would defeat and invalidate said claim, That about Four (4) weeks since this Deponent was credibly informed that Francisco Arce was at the time of the making of the Grant

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upon which said Claim is predicated was the private Secretary of the then Governor Micheltorena, that his the said Arce's signature to the said Grant was not genuine that he never subscribed his name thereto but that the same was a forgery, and further that said signature bore no exact resemblance to his the said Arce's signature or handwriting, That a great number of persons could be introduced if necessary who were familiar with his the said Arce's signature, who would swear that said signature in no material respect resembles the hand writing of said Arce, And besides that other material testimony could be adduced Confirmatory & corroborative of the fact that said signature is a forgery, This Respondent saith that Confiding in such information he took means some two weeks since to send to Monterey where said "Arce" resides & then was requesting him to come to San Francisco to the end that the Affidavits of said Arce might be taken and the affidavits of such other persons as might be obtained on which a motion might be made to this Hon. Court to permit the hearing of further testimony against said Claim

before the Decision thereof, That said Arce came to Sanfrancisco within a few days & stopped as Deponent was informed at the "California Hotel", That as soon as Deponent was advised, That said Arce was at said Hotel which was a day or so thereafter; He Deponent sent persons to request an interview with him; That this Deponent sent again, and again, for two or three successive days, when to his astonishment Deponent was informed that said "Arce" was secreted & could not be found or seen, that after several days of ineffectual search for said "Arce" And not being able to find him, Deponent was informed that said "Arce" had left for his home, at or near Monterey. This Deponent further says that when said "Arce" arrived in San-Francisco many persons who are interested in the confirmation of said Claim were then stopping at said Hotel & that to the best of his information and belief such persons or some of them paid said "Arce" to secrete himself and leave town & that some or all of said Parties have paid other parties, who were active in procuring the testimony of said "Arce" and such others as might be necessary to defeat said claim

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to become inactive and silent; and further that this Deponent knows of no mode by which he can compel the said "Arce" to make an Affidavit for the purpose aforesaid; But that he truly and verily believes that if this cause be opened for the reception of further proof, And that said "Arce" be compelled by process of Subpoena to give his evidence it will be made to appear that said signature is not genuine

Sworn and Subscribed
before me this 18th Day
1857

C. D. V. Chamberlain

Wm L Huggins
Not Pub

(Seal)

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U. S. District Court.
Northern District of California }

M. G. Vallejo
vs
The United States }

State of California
County of San Francisco } ss.

José Berryesa being duly sworn doth depose and say that he resides at Martinez, Contra Costa County California that he knows Francisco Arce formerly and now a Resident of said State and is well acquainted with his hand writing - that he has often seen him write and sign his name to papers and documents - that he has closely examined the paper purporting to be a Grant on file in this Cause, and on which the said M. G. Vallejo ~~predicates~~ a claim to a Rancho Known as the "Suscol Rancho" in this State, and the name of said Arce subscribed thereto, and that he verily believes that the same is not the hand writing of the said Arce, nor his signature; and further says that he believes various credible persons of character and veracity can be produced who are acquainted with the hand writing of the said Arce to prove that said signature is not genuine, and further says not. (signed)

José Berreyesa.

Subscribed & sworn to before me this
16th day of December 1857
P. K. Woodside
Notary Public }

United States
vs
M. G. Vallejo } No 291
In Dist Court for the Northern Dist
of California

Sir: Please take notice that a motion will be made before the Hon. District Court for the Northern District of California at the Court room in the city of San Francisco on Wednesday the 23° day of Dec. A.D. 1857 at 11 oclock of that day or as soon thereafter as Counsel can be heard for an order to open said Cause for the purpose of receiving additional testimony in behalf of the United States, & that such motion will be founded on the Affidavits of Jose S. Berreyesa & C. M. Chamberlain Copies of which are herewith served.

Yours &c
(Signed) P. Della Torre
U. S. Atty

To B. S. Brooks Esq
atty for claimants.

No. 291
U. S. District Court
Northern District of California

The United States
vs
M. G. Vallejo

Copies Affts & Notice of motion.

Motion to open defense
Wednesday 23d

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P. Della Torre
U. S. Atty.

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U. S. District Court.
North. Dist. of California

The United States. Apltes.
v
Mariano. G. Vallejo & ano. Respt.

Northern District of California. City & County of San Francisco. ss. - Benjamin. S. Brooks being duly affirmed saith - that he is the attorney for the claimants. that prior to the submission of this cause, he made diligent search for documentary evidence existing in the archives, but without success. That a few days since J. J. Williams. Esq one of the attorneys of this court informed Capt. Forbie, one of the defendants that he had accidentally discovered in the archives a copy on record of the letters of General Micheltorena to Genl. Vallejo the original whereof is already in evidence. Deponent immediately procured a traced copy and the same is now on file in this cause in the office of the clerk of this court and he verily believes that the same is material testimony for the claimant and being record evidence ought to be received in evidence without prejudice to the submission of the case heretofore made.

Sworn to before me this
30th day of December - 1857

B. S. Brooks

Sir.

Please to take notice that upon the affidavit of which the forgoing is a copy. I shall on move this Honorable court on Monday. Jan. 8. 1858. at the o-

pening of the court on that day or as soon there after as counsel can be heard that the traced copy of a letter from Gov Michelorena to Gen Vallejo on file in this cause be considered in evidence without prejudice to the submission of the case.

Yours &c.

Brooks.
Atty for Pl'ff

To
Ed. Delafosse.
U.S. Dist atty.
Dec. 30. 1857.

N.L. District Court
Northern Dist of Cala

United States Pltf.
v
Gen. Mariano G. Vallejo et al
Defts

Affr. & Notice of motion.

Brooks.

To Col Wm Hoge

Filed

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United States
v.
M. G. Vallejo

Transcript No. 153.
D. C. No. 741.

Sir,

Please take Notice that the deposition of T. M. Leavenworth will be taken in this case on Friday next 3rd of September at 12. M. before W. H. Chevers Esq. U.S. Commissioner. at his office.

Respectfy &c
Wm. Blanding
Claimants Atty.

Aug. 28th. 1858.

U. S. Dist. Court

U. S.
v.
M. G. Vallejo

Copy Notice

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1.

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The United States

v.

M. G. Vallejo and assigns,

} D. C. 318. L. C. 291.

Confirmed by Land Comm^r.

The land claimed is called "Suscol" and lies in the County of Solano.

The documentary evidence is as follows:

A communication from Govr Micheltorena dated Los Angeles, March 16. 1843, in which he rejects a proposition made him by Vallejo, that the government grant "Suscol" in consideration of services rendered and payment due therefor, but accepts another proposition which offers $ 5000 as the consideration; and directs that $2000 be sent in silver, and supplies to the amount of $3000 ~~to~~ be delivered on board Sch^r California.

Accompanying this communication is a title to "Suscol" signed by Micheltorena and dated March 18th 1843. The quantity of land granted is not stated but is described as bounded on the North by the lands called "Tulucay" and "Suisun" and South

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by the Straits of Largenes. The grant is subject to sundry conditions, amongst which are the proper measurement of the land, approval by the Assembly, revalidation of the present paper by the government, the proper maps to be presented, that a house shall be built within one year, which shall be inhabited, and that juridical possession shall be obtained.

Then follows a title on stamped paper dated June 19. 1844. at Monterey, signed by Micheltorena and attested by Arce, Secretary ad interim which describes the land as "bounded on the north side by the "lands named Tulucay and Suisun, and on "the East and South by the Straits of Largenes, "Ysla de la Yegua and Estero de Napa" that the land is sold for the consideration of $5000, receipt of which is acknowledged, and that the land is conveyed to him "without any restriction".

Next is the record of approval by the Assembly on stamped paper, dated at Los Angeles September 26. 1845, of the grant, naming both titles and the money consideration, and stating that a certain island near the point in the middle of the Straits of Largenes, between the bays of San Pablo and Suisun is included.

original not in the Transcript

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The signatures of Micheltorena & Arce were proved genuine by Pablo de la Guerra. There is no proof of the signature of Pio Pico or Covarrubias to the approval by Assembly, or as to the whereabouts of the original papers.

L. B. R. Cooper proved that he received on board the Sch. California in the year 1842 or 1843, at Petaluma Creek supplies of grain, blankets, shoes &c.; that they were furnished by M. G. Vallejo to be carried to San Pedro for ~~the Governor~~ ~~ment of~~ Micheltorena. Before witness sailed from Los Angeles Micheltorena told him that M. G. Vallejo had offered $20,000 for Suscol and he was sent after the supplies, which he understood were in payment of the land.

p 21 By testimony in the case it appeared that the tract as described by the boundaries contains 17 or 18 square leagues.

~~Occupation and cultivation were fully proved~~.

The only question about which the Board had doubt was as to quantity. It was held that in cases where a grant

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was issued for a stipulated consideration the law of 1824, prescribing the maximum of 11 leagues, did not apply.

Evidence has been introduced in this Court of rather a general and vague nature, to show that up to the time of the American occupation this land was occupied by and in charge of a few Mexican Soldiers, under command of a Sergeant, and that the land was what the witnesses call a National farm. Witnesses were also introduced to impeach the testimony of Salvador Vallejo and José de la Rosa, witnesses for the claimants before the Land Commission. No testimony has been introduced impeaching the genuineness of the title papers.

~~San Francisco March 20. 1857.~~

The first question raised by the Govt. is:

Was there a compliance with the express condition of the grant of 1843, which required that a house be built within one year, which shall be inhabited?

The testimony for the claimant on this point is as follows:

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Vaca states that Vallejo built a house on the land in 1837.

Juarez states that Vallejo has occupied the Rauch since 1836.

Peña states he has known the ranch for twelve years; it was always occupied by Vallejo - who had a house on it.

No witness, however, pretends that Vallejo built a house on the land pursuant to the grant of 1843; nor is there any proof of inhabitancy by Vallejo.

On the contrary, the government witnesses say that the Rauch was first a mission; then occupied by the Mexican Government for military purposes, and continued so to be occupied until the American occupation of the country: That Vallejo lived all these years at Sonoma; never lived on the Rauch; never had a house on it occupied by or for him and never even placed stock on it.

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Notwithstanding the Grant, the land seems to have continued in the occupation of the Mexican Government, although Vallejo's Cattle seems to have roamed over it.

The next question raised is —

Whether the Grant of 1844 is valid: It has no restriction or condition, and is made for a consideration of $5000 in money. It is insisted by the Government that the Governor of California had no constitutional power to sell any part of the public domain for money. If such a power does in point of fact exist, some ingenious person will at least be able to designate the source whence it is derived. No such designation is deemed even possible.

Whatever recognition may have been heretofore extended to the acts of official functionaries in California, both in Mexico before the purchase of California by the United States, and in Washington by our own Government — whatever respect it may have been deemed just and right to lend to official usages in California apparently not altogether in harmony with the Constitution and Laws of the Mexican Republic — we

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believe that none of our Courts have yet gone so far as to regard the organic law of Mexico as no longer existing. The Mexican Republic, as such, still is in being. Whatever disorders may have marked the civil history of the Mexican people, they still claim to be a Republic; to live under the authority of a written Constitution, exceedingly similar to our own Federal Constitution in most essential points. Our own government recognizes the government of Mexico as being yet a Republic, and not a Despotism. The people of the United States would not be even willing to tolerate a Despotism so near their own Territorial limits.

If, then, the written Constitution of Mexico continues to exist, the question which naturally arises for solution, is whether the people of Mexico have conferred upon either branch of the Government - or upon all together - the Executive, the legislative or the judicial - the right to dispose of the public domain in the mode specified? If this question can be answered in the affirmative, the next question will be, how, and by what civil functionaries was such a

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disposition to take place?

Admitting the existence of such a power, somewhere, under the Mexican Constitution, (an admission which could not be made save for arguments sake) the question would arise for decision, whether the power had been exercised in the present case rightfully and constitutionally?

Now, upon an examination of the Mexican Constitution of 1824, it is most apparent that no such power as the one in question was lodged in any Department of the Government, or in any officer appointed and acting under it. If such a power had been vested at all, it is more than probable it would have been lodged either in the Legislative or Executive branch. Such seems not to be the case; at least no specific grant thereof appears to have been made. It is certainly not mentioned under the head of "The Prerogatives of the President and Vice President" - "Title IV. Section 3" - Nor is it specified in the succeeding Section, under the head of "Attributes of the President" &c.

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Under the head of "Powers of the General Congress" - Section V. Title III, it is nowhere alluded to, unless it be included under the general phraseology in which certain sections thereof are couched, which we cannot perceive to be the case.

The celebrated Decree on the subject of the colonization of the Territories, nowhere provides for the sale of any portion of the public lands, situated in said Territories, in the manner adopted in the present instance. The powers given in this Decree relate strictly and exclusively to Colonization purposes. After providing that lands of the Nation, not being private property, might be colonized, it goes on thus:

"To this effect, the
"Congress of the States shall form, without
"the least delay, laws or rules of colonization
"for their respective limits, conforming them-
"selves in all respects, to the Constitutive
"act, the general Constitution, and the rules
"established in this law."

There is not only nothing in this decree which authorizes any part of the Public Territory to be sold for money, to whomsoever might choose to purchase

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it, but it might be easily shown that such a sale would have been in opposition to the whole policy of this Decree. It is not deemed necessary to enlarge upon this head - as might easily be done.

Similar observations to those made above might be justly applied to the provisions of what is known as the "Regulations of 1828," adopted for the purpose of carrying into effect the Colonization Act of 1824.

We are aware that it is supposed that "The Instructions and Powers of Micheltorena," under date of Feby 11. 1842, conveyed to him authority to make such a sale as he is asserted to have made of the land in controversy. We do not so understand that document; nor can we think the Court will. The special objects avowed by the Government as those desired to be attained through the instrumentality of the "Powers and Instructions" granted have no affinity with, nor relation to, the conversion of the public domain, or any part thereof, into money: and

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though it is stated in the "Powers and Instructions" referred to, that the "Supreme Government, trusting in the justice "and activity of Micheltorena," "conferred "powers upon him extensive" in relation to certain matters specified, and in relation "to others which may conduce "to the welfare of the country, including "among others, the administration of the "Post office Department, colonization" &c. &c; yet it does not seem necessarily to follow, that such powers as has been exercised in this instance, was designed to be conferred.

Upon the whole, therefore, we insist that the grant, for the reason stated, is invalid, and should be rejected.

The next question raised is, whether, supposing such authority was vested in the Governor of California, the quantity could exceed Eleven square leagues.

~~If this last proposition be correct then it is insisted that the claimant Vallejo has already had granted to him, at the date of this grant in 1844, the~~

~~maximum of eleven leagues, which has~~
~~been confirmed to him by this Court.~~

The 12th Section of the Decree of 18th August 1824, respecting Colonization, declares that "no one person shall be "allowed to obtain ownership of more "than" &c. — in all, eleven leagues.

This is not only a restriction incidentally on the power of the Governor to grant, but is an absolute prohibition on the part of the citizen to hold. The form of expression forbids any greater accumulation in the hands of any one person than Eleven leagues.

If this restriction is absolute, and no one can obtain ownership of more than eleven leagues, whether by purchase or gratuitously, or by both means jointly, then this grant is void, inasmuch as in Case No 321 — U. S. v. M. G. Vallejo — a grant was made on 22d October 1843 to said Vallejo of a tract of 15 square leagues known as "Petaluma": ten leagues being granted gratuitously and the other five leagues being a purchase for the sum of $2000 — thus exceeding the limit prescribed by the law of 1824.

If the Court is of this opinion

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then even the Petaluma grant is void for the excess; and it may perhaps seem strange that the District Attorney should have consented to a confirmation of that claim and now opposes this. But, at the time the Petaluma claim was called for trial, no doubt had been suggested on these points, and the District Attorney without any means of knowing certainly what principles were settled by this Court before he came into office, had been informed - it seems erroneously - that this Court had sustained the oft repeated decision of the Land Commission in favor of the validity of sales by the Governor without any restriction as to quantity. Hence his assent in the Petaluma Case. But that case has been appealed to the Supreme Court and this (Suscol) case ~~has~~ ordered To be appealed on this very question of the power of sale, and it is raised for the purpose of having it passed on here below.

San Francisco June 16. 1859.

Wm. Blanding
Dist Atty.

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U. S. District Court

The United States

v

M. G. Vallejo and assigns

Brief for the U. S.

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Wm Blanding
U. S. Attorney.

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No. 318. ND

COURT PROCEEDINGS.

WEDNESDAY, March 21, 1860.

United States District Court—McALLISTER, J.

CONFIRMATION OF THE SUSCOL CLAIM.

The United States vs. M. G. Vallejo.—In this case, the claim to the Suscol ranch, in Napa and Solano counties, Judge McAllister to-day entered a decree of confirmation, and rendered the following opinion:

The claim in this case was confirmed by the Board of Land Commissioners. On appeal to this Court it was submitted for review some time previous to the departure of the District Judge; and it becomes my duty to dispose of it. The documentary title of claimant is as follows:

DOCUMENTARY EVIDENCE.

1. An archive copy of a communication from Micheltorena, then Governor, dated March 15, 1843, in which he rejects a proposition made by the claimant, that the Government should grant Suscol (the ranch in dispute,) in consideration of services rendered, and payment therefor; but accepts another proposition of $5,000, and directs $2,000 to be sent in silver, and supplies to the amount of $3,000 be delivered on board of the schooner *California*.

2. A grant of same date (15th March, 1843,) to the petitioner, signed by himself, as Governor, and Francisco Arce, Secretary *ad interim*. On the face of this grant the Governor professes to make it by virtue of the powers vested in him, and to grant to him, the petitioner, the ownership of it, subject to the approval of the Assembly. The quantity of the land granted is not stated; it is designated as "the place known by the name of Suscol." It is described as bounded on the north, by the lands called Tuculay and Suisun, and south by the Straits of Carquinez. This grant is made subject to the condition that the petitioner shall apply for the revalidation by the Government of the present title on stamped paper, presenting also a map and also other conditions, among which one is, that the petitioner shall build a house within one year.

3. Then follows a title on stamped paper, dated June 19, 1844, dated at Monterey, signed by Governor Micheltorena, and attested by Arce as Secretary of State *ad interim*, which describes the land as bounded north by lands called Tuculary and Suisun, and on the east and south by the Straits of Carquinez, Mare Island, and the Estero de Napa. This grant states that the petitioner had requested the purchase of the place named Suscol, and that $5,000 had been received by the Government to its satisfaction It recites that, using the powers vested in him by the Supreme Government of the Mexican nation, he has sold to the petitioner the aforesaid land of Suscol, for the sum of five thousand dollars, the receipt of which, by the Government, he acknowledges and declares the petitioner owner, to occupy and possess, without restriction.

4. Then comes the record of approval by the Assembly, on stamped paper, dated at Los Angeles, September 26, 1845, naming both foregoing titles. This document was received in evidence by the Board of Land Commissioners, is included in the transcript of the record, and enumerated in the brief of the U. S. District Attorney, but who states that the original is not in the transcript, and the signatures have not been proved. Such I find to be the facts and therefore exclude the approval from the documentary evidence

As to the genuineness of the two grants, it seems to be admitted The District Attorney states that the signatures of Micheltorena and Arce were proved by Pablo de la Guerra. He further admits "that no testimony has been introduced impeaching the genuineness of the testimony of the title papers."

5. The fourth document of title is the original official communication, dated March 14, 1843, from Governor Micheltorena to the petitioner, in which he states he had sent a title for the place called Suscol. It expresses the regret of the Government that it cannot accept the first offer which the petitioner offers and which had been made, because the Supreme Government had ordered all back pay suspended, which became due before a certain date named, which suspension should continue until the public Treasury should be relieved from its embarrassment. It further states, the imperious necessity which he labored under to maintain his salaries, for which purpose he sent the schooner *California*, and requests the petitioner to find her with provisions to certain amounts specified, and five hundred pair of shoes, or material for making them.

The above official communication, sent with the first named title to the petitioner, is a certified copy, produced from the copy of the book of official communications in the Surveyor General's office, between the Mexican functionaries, for the year 1843. It is also referred to in an official letter from Governor Micheltorena to the Commissary, José Abrego, (see Archive exhibits, in the case of Limantour *vs.* U. S.) A similar communication refers to John B. Cooper as Captain of the schooner *California*, (*Ibid*, 14) Setting aside the second grant of 19th June, 1844, the official communication of Governor Micheltorena, accompanying the title of 1st March, 1843 shows the grant to have been a sale. In fact, the District Attorney treats the whole transaction as one, and that is the main ground on which he rests the validity of this claim.

If the Governor had the power to effect a sale, the recitals in the grant that it was made under the Colonization laws, although it could not have been made under them, does not necessarily show it was made without any authority. U. S. *vs.* Clarke, 8 Peters, 436.

TESTIMONY OF COOPER.

Independently of the acknowledgment of the receipt of the consideration money of $5,000 by the Governor, the testimony of John B. Cooper confirms, as far as it goes, the payment of that money to the Government. This witness states that in the year 1843 or 1844, (it is evident from the facts stated subsequently by the witness it was in 1843,) "I took some supplies in the schooner (*California*) from San Pedro to Petaluma for Governor Micheltorena, and by his direction. The supplies consisted of wheat, corn, beans, peas, blankets, tanned leather, and shoes. Does not recollect their value. The vessel carried about eighty-five tons, and was loaded full. M. G. Vallejo furnished the supplies with which the vessel was loaded." The witness deposes that he saw Micheltorena at Los Angeles before he went after the supplies, and was told by him that Vallejo (the petitioner) had offered to buy from him the tract of land called Suscol, and "he sent me after the supplies, which I understood from him were to go in payment of that land. The supplies were furnished before Micheltorena came up to Monterey, and the same summer he came here." The only mistake which appears in the testimony of this witness is in the amount he thinks Micheltorena told him the petitioner had agreed to give.

The genuineness of the two grants is proved by the testimony. The District Attorney admits no testimony has been produced to impeach them. The testimony has been on file since the decree was rendered by the Board of Commissioners in 1855, and not a single witness has been introduced to impeach it, except the single evidence of Salvador Vallejo. The next question is as to the possession of the premises. Some conflict has arisen out of the fact that they had been in possession of the military government at a time when the petitioner was military comandante. That the possession passed to the grantee, that he had been in possession of at least a part of the land, and built a house upon it prior to the grant of 1843, is proved. It is important to examine the testimony minutely in relation to possession, as it is a circumstance calculated to show the *bona fides* of the transaction, sustained as it is by the admitted genuineness of the two grants and the payment of the money consideration.

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TESTIMONY OF JUAREZ.

Juarez, a witness, deposes he has known the Suscol Ranch for twenty years; has known it in the possession of Vallejo, (the petitioner,) who has occupied it with cattle and horses; he has had 12,000 head of cattle and from 800 to 1,000 head of horses on it; he cultivated a considerable portion of it; how much I cannot tell; he sold 40 or 50 quintals of grain; I lived twenty years on the adjoining ranch.

TESTIMONY OF PENA AND VACA.

Pena, another witness, swears he has known the ranch for twelve years; during the whole time have known it in possession of M. G. Vallejo, (the petitioner.) who had a house built upon it, cattle amounting to four or five thousand, horses, and some cultivation.

Vaca states, that when he became first acquainted with the ranch, in 1837, it was then occupied by General M. G. Vallejo, (the petitioner,) who had a house built upon it, upwards of 3,000 cattle, had some horses, a little cultivation, and has occupied it down to this time, (1853.)

TESTIMONY OF SALVADOR VALLEJO.

Salvador Vallejo—This witness is the brother of the petitioner. His testimony was attempted to be impeached to which reference will be made. He strongly confirms the testimony of the three preceding witnesses.

The testimony of the three witnesses is referred to by the District Attorney, and the objection solely made is that no one of them, nor any other witness, proves that a house was built within one year from the grant of 1843, and that the testimony was not sufficient to prove the inhabitancy of the grantee. The Board of Commissioners, in their opinion, say of the testimony: "The proof of occupancy and cultivation required by the laws of colonization, is beyond doubt and abundant." It certainly proves possession by the grantee. The fact that he had built a house prior to the grant, and did not build a second house, under the circumstances of this case, cannot operate in this Court a for eiture of all his interest under the grants The possession of the land and the cultivation of a portion of it under the grants, was a sufficient occupation. To disprove the foregoing testimony, some depositions have been taken pending the appeal of this case. That of José Ramon Mesa states that the possession of the ranch was in the Mexican Government in 1846, and he says the soldiers were still there when the United States took possession of this country. In his examination, he swears the last time he saw the soldiers on this rancho, Micheltorena, Governor, was there. This must be incorrect, for it is an historical fact that Micheltorena was expelled from the country in the early part of 1845. It appears by the official correspondence, that the petitioner was Military Commander in 1843, and it is historically true that he continued in that capacity until 1846. The civil war which had been pending in California terminated by the abdication of Micheltorena on the 22d February, 1845, and in 1846 this country was invaded by a foreign country, and the simple fact sworn to by this witness, that soldiers were on the ranch at the time he does, Vallejo being Commander, cannot outweigh the direct evidence given by the witnesses for petitioner.

In the latter part of his deposition, he qualifies his testimony, and says: "I have known Gen. Vallejo to take stock off the ranch and sell it, both before and after the Americans came here; I believe that he sold all the stock he took off The ranch was under the control of Gen. Vallejo until the Americans came to this country, it was recognized as being under his control," and the deposition concludes, that "after Micheltorena left the country, Vallejo had vaqueros and cattle on the ranch."

TESTIMONY OF PACHECO.

Pacheco, a witness for the Government, confirms the testimony of immediately preceding witness. In a subsequent part of his deposition, to prove occupation by the Mexican Government, he states that the last time he saw soldiers on the ranch, it was in 1839. Alvarado was Governor at the time, he thinks; and such was the fact. If the year 1839 be the correct date, it cannot be the proof of the fact of Mexican possession in 1843, and subsequently.

TESTIMONY OF WESTGATE.

Westgate is another witness for the Government, and swears to the Mexican possession of the ranch from the fact that soldiers were there, and he swears, negatively, "he never knew Vallejo had any claim to the ranch than as General in the army, and never heard of his claiming, as his own property, until 1852.

TESTIMONY OF WATSON.

Watson is the last witness for the Government on that point, which has been taken pending the appeal. This witness knew the ranch in 1846; negotiated for the purchase of a part from Vallejo (the claimant) in 1847, which was broken off because the latter refused to give a warranty deed, but offered to give a quit-claim, one with a warranty by himself and heirs. In 1848 another attempt was made by witness to purchase another portion of the ranch from claimant, but failed, for the same reason for which the negotiation in the preceding year was not consummated.

These depositions were taken in 1857. They cannot be deemed to outweigh the direct and pointed testimony of Juarez, Vaca and Pena, whose depositions were taken in 1853, since which they have been on file in the office of the Land Commissioners and of this Court. No attempt to impeach the credibility of those three witnesses during a series of years which has elapsed, although an attempt was made to impeach the credit of Salvador Vallejo. Two witnesses, produced by the Government, swear they would not believe him on his oath. The third witness, (Brooks) produced by the same party, swears "he knows Salvador Vallejo, and knows his reputation for truth and veracity; I would take his word anywhere." The other witnesses stand unimpeached, and it is unnecessary to rely on the testimony of Salvador Vallejo.

OBJECTIONS BY THE GOVERNMENT.

This case, then, is to be considered as one in which the title papers are admitted to be genuine, the payment of a money consideration paid, and the possession of the claimant, as was ordinarily taken under the laws and usages of Mexico, established. The sole grounds taken by the Government, on which the validity of this claim is resisted, are:

1. That no witness proves that a house was built within one year from date of the grant of 1843.

That a house was built upon the land prior to the date of either grant by the claimant is clearly proved. That a second house was not built (as subsequent condition) especially in the case of an absolute sale, could not authorize a Court of Equity to forfeit any interest which has become vested in the claimant.

2. The second ground is, that the grant of 1844 is invalid because it is without restriction, and for a consideration of $5000 in money.

3. Because the Governor has exceeded his power in making a grant for the excess of eleven leagues.

The two last objections, which urge the grant to be void because it was a sale for a money consideration, and because it exceeds in quantity eleven leagues, will be considered together. These objections apply to the second grant of 1844, which purports to be on its very face an absolute sale.

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GRANT FOR A CONSIDERATION.

This grant cannot be deemed, in the language of the Supreme Court of the United States, in the Cambuston case, (20 How, 64) "a pure donation, without pecuniary consideration, or meritorious services rendered to the Government." Nor does it purport to be issued under the Mexican colonization law of 1824, or the Regulations of 1828. It is treated by the Government attorney for what it really is, an unrestricted sale for a pecuniary consideration. Had it been a pure donation, made professedly under the laws of Mexico, professing to have been issued by virtue of those laws, and in the pursuance of the terms and provisions prescribed by them, proof of a compliance with the restrictions by the Governor would not have been afforded by the recitals in the grant of his having done so, especially if there had been doubt of the *bona fides* of the grant. This is the extent to which the Court went in the Cambuston case.

It does not apply to a *bona fides*, all made to supply the necessary wants of the government, and applied to the removal of them. If so intended, its practical effect would be in the present and all analogous cases, to nullify the application of the "principles of equity," which are made one of the rules of decision by the act of Congress for this Court in the exercise of the jurisdiction conferred on it. Nothing was said by the Supreme Court to justify such conclusion. In that case they use language which indicates that if the grant had not been a mere donation, had been free from suspicion, for meritorious services rendered to the government, or a pecuniary consideration, the claimant would have stood on a different footing. They say, (20 How. 64,) "In the examination of this case, we have found it very difficult to resist a suspicion as to the *bona fides* of the grant. It is a pure donation, without pecuniary consideration, or meritorious services rendered to the Mexican Government."

In the case of Fremont *vs.* United States, C. J. Taney says, "And the grant was not merely to carry out the colonization policy of the Government, but in consideration of the public and patriotic services of the grantee. This inducement is carefully set out in the title papers, and although this cannot be regarded as a money consideration, making the transaction a purchase from the Government, yet it is the acknowledgment of a just and equitable claim, and when the grant was made on that consideration, the title, in a Court of Equity, ought to be as firm and valid as if it had been purchased with money on the same conditions." Now in this case, the grant was made for a money consideration by the Governor, to obtain, and who did obtain by it, the means to maintain the starving soldiers of the country, at a critical moment of its then condition. This fact is ascertained by the official communication of the Governor to the grantee, found in the Mexican archives for the year 1843, and referred to in another record for same year. The grantee was in possession, open and notorious, for three years, undisturbed, prior to the occupation of this country by the Americans. Under such circumstances, could the Mexican Government, had it continued, have refused to have recognized the claim of the grantee with justice or equity?

If the facts that the government received a pecuniary, and, for aught that appears, adequate consideration, must necessarily avoid the grants, with the other circumstance that the quantity of the land granted exceeded eleven square leagues, it must be done, because these grants are within the operation of the colonization law of Mexico of 1824, in relation to the distribution of lands by donation, to carry out the colonization policy exclusively, and which restricts the quantity of lands to any one individual to eleven leagues.

The power to *give* under certain restrictions, made evidently to prevent fraud in the distribution, did not, by *implication*, repeal the power, if it previously existed, to sell for a pecuniary consideration, if *bona fide* exercised.

That such power did exist in the Governors, the Court will now consider, and give its reasons for the conclusion to which it is arrived.

In a work published in 1829, in the city of Mexico, among the laws supposed to be retained in Mexico, is the decree of the Spanish Cortes of January 4th, 1813. This law evinced a spirit and policy evidently more liberal than had previously animated Spanish legislation, and which probably did not operate in Spain or any of its then colonies; but, it is reasonable to believe that in common with other decrees of the Spanish Cortes, was called into active existence by the Spanish revolution of 1819, and was in force at the time of the independence of Mexico.

Such is the view enunciated by the Board of Land Commissioners in the case of the City of San Francisco *vs.* U. S.; and the publication of the decree in Mexico in 1829 as one of the retained laws as of force, comfirms sthe opinion of the Board.

The Supreme Court of this State, in the case of Cohas *vs.* Raisin, (3 Cal., 443,) distinctly affirm its existence, and cite the compilation in which it is given as "Leyes Vigentes," p. 58.

That tribunal, in the case of Welch *vs.* Sullivan, (8 Cal., 168,) again affirm the existence of this decree. They say the decree of the Cortes in 1813 directs, etc.

But there is internal evidence afforded by the Mexican legislation, on the subject of colonization, that the existence of the decree of 1813 was known, and legislation was enacted in view of some of its provisions. The deseño making the boundaries of the land petitioned for, which is required to accompany the application to the Governor, is in conformity to the decreee of 1813. Again, the conditions usually inserted in the colonization grants under the Mexican law and regulations, are similar to those prescribed in the 24 section of that decree. This, in its preamble, among other things, declares its object to be "to furnish with this class of lands (public lands) in aid of the public necessities (wants,) to reward meritorious defenders of their country, and *citizens* who have no property." The evident intent of this decree, declared on its face, is, that common, or public lands, should be converted into private property, and lands granted should be distributed in full property, and with established metes and bounds. Upon a careful revision of this decree, the conclusion must be: that in the absence of other legislation, the carrying out this decree must have devolved on the Executive Department, and the Governors of California, under the instructions of the Supreme Government, would have the power to grant common lands. Now, by that decree, the quantity of land to one individual was not limited to any given quantity, but as to persons it was limited to citizens.

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LIMITATION OF AMOUNT.

The only instance in which quantity is limited is in certain donations to certain official persons to whom small lots of prescribed extent were to be granted. This decree authorized grants to meritorious defenders, and a sale of land to aid the public necessities, and such sale made in good faith would be the legitimate exercise of power, unless the provisions of the decree confirming the power has been repealed by subsequent legislation. Have they been repealed expressly, or by fair implication by the colonization law of 1824 of Mexico, or by the regulations of 1828?

Animated by a more liberal views of her interests, Mexico determined to afford inducements to emigration, and she opened her public lands to foreigners as well as citizens; and determined to make donations for colonization purposes to all who strictly complied with the terms which in the distribution of the land she prescribed to prevent fraud. Among these, was limiting the quantity of land in any donation to a single person to eleven leagues. There are many reasons for the legislation of Mexico to surround her system of colonization with checks and limits when the Governors were to distribute the public lands, which do not apply to a *bona fide* sale for money consideration. Such is not a case, which, by implication, should be brought within the operation of the Colonization laws. The construction of a law, from the action of those whose duty it is to carry it out, should be considered when endeavoring to ascertain the intention of the Legislature. The facts that sales have been made by Governors, of lands in quantities of more than eleven leagues, who would grant by donation to a colonist not more than eleven, is a circumstance not to be disregarded.

By the records of the case, U. S. *vs.* Rodriguez, No. 479, among the files of the papers of the Board of Land Commissioners, it is made to appear that Governor Pio Pico issued a grant for twelve leagues in consideration of the sum of $12,000 past indebtedness to the Government. The Board of Land Commissioners confirmed the claim. The land in that case is situated in the southern district, and the records inaccessible to us, and it is impracticable to ascertain whether any appeal is pending, has been made, or been dismissed. The opinion of the Board is, however, on file among the archives in the Surveyor-General's office. In that opinion it is stated, "that in consequence of the importance of the two questions involved, the Court took the case under advisement, and also for the reason that the determination of the case would settle the fate of a large number of cases undetermined so far as the action "of that tribunal was concerned." The first of those questions involved the only two grounds taken in the present." It was whether the power of the Government of California, under the Mexican autority, existed, to sell or grant for a consideration of money, or with limits, to exceed, in amount, eleven leagues? The Board decided that he had such power.

In the case of the U. S. *vs.* M. G. Vallejo, No. 321, the same tribunal affirmed the principle decided in the previous case, and confirmed the claim to fifteen leagues. In their opinion, the Board say, "there appears no objection to the confirmation of this claim except that it exceeds, in amount, the *maximum* authorized to be granted, under the provision of the Colonization Law. The last five leagues do not appear to have been granted under those provisions, but a sale for an actual consideration, received by the Government, of two thousand dollars. This point was fully considered and decided by the Court, in case 479, and the doctrine recognized that a *bona fide* sale made for a full consideration, by the Governor of California, under the Mexican laws, vested in the purchaser both a legal and equitable interest, of which he would not be divested by the Government by any rules of law or equity." No power, certainly, was given by the Colonization Law of 1824, authorizing the Governor to grant, by way of sale, under any circumstances. If, therefore, he does not possess the power, independently of that law, it exists nowhere, and a money consideration need not to have been referred to the U. S. Supreme Court, to illustrate the equities of parties applying for a confirmation of their grants.

In the Cambuston case (20 How, p. 4,) they assign as a reason for a strict interpretation of the claimant's grant, and its want of equity, that there had been no pecuniary consideration paid. In Fremont's case (17 How., 558) they refer to the fact that the grant was given for meritorious and patriotic services, and should place the claimant on a footing with one who had purchased with money and thus give a just and equitable claim against the Government, the title to which, in a court of equity, would be firm and valid.

No sale, it would seem, for any amount of money, could be legal so as to pass a title, if it be conceded that no power on the part of the Governor to make a grant of the kind existed. It does appear to me, that when the Supreme Court refers to the money consideration of grant, as vesting in the holder of it a superior equity, by so doing they have at least not decided that the Governor's act was void.

They must have acted under the impression that the power to sell in good faith was in the Governor, or that the equity of the case was such as gave "a just and equitable claim against the Government," the title to which, in a court of equity, would be "firm and valid." In either view, but especially on the ground of a power in the Governors of California, apart from the colonization law, to aid in good faith, by a sale of land, the public necessities, this Court considers that a decree affirming that of the Board of Land Commissioners in this case must be entered. Such an one will be drafted by claimant's solicitor, and handed to the Court for approval and signature.

March 21, 1860.

March 21, 1860.

Wm Blanding, U. S. Atty,

John J. Williams for Claimants.