

CASE No.

74

SOUTHERN DISTRICT

SAN MIGUELITO GRANT

MIGUEL ABILA

CLAIMANT



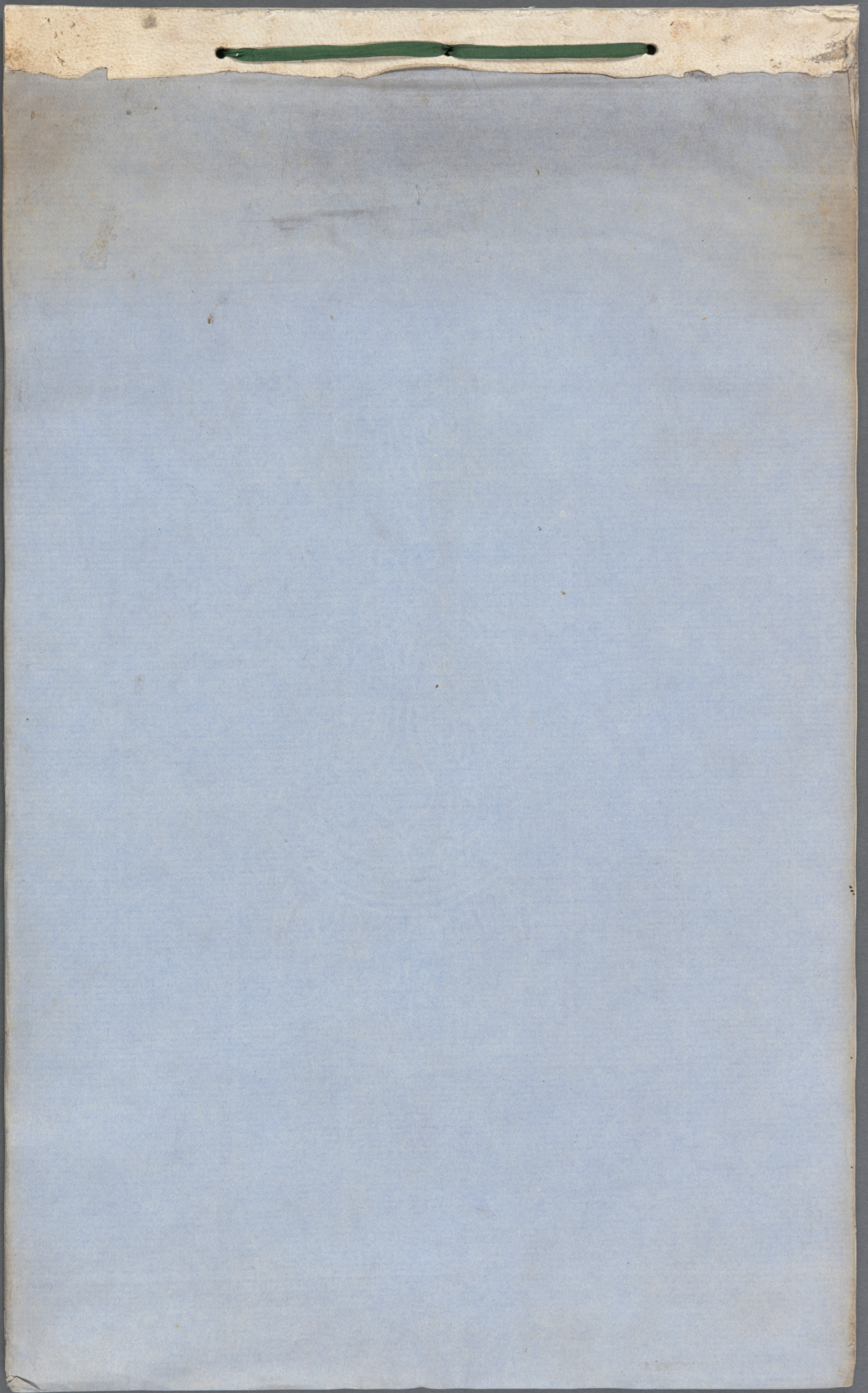


LAND CASE 74 SD page 26

FEB 19 1963

P 2 W  
SUN COTTON FIBER  
EAGLE BRAND  
Guaranteed







# TRANSCRIPT

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PAGE 1

OF THE

# PROCEEDINGS

IN CASE

NO. 314

*Miguel Abila*

CLAIMANT

VS.

THE UNITED STATES, DEFENDANT,

FOR THE PLACE NAMED

" *San Miguelito*



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 thirty first day of August, 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 Miguel Abila

for the Place named

"San Miguelito"

was presented, and ordered to be filed and docketed with No. 314 and is as follows, to wit;

(Vide page 3 of this Transcript.)

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

San Francisco Jan. 22<sup>d</sup>. 1853.

In case No. 314 Miguel Abila for the place named "San Miguelito," the deposition of Nicholas A. Sew, a witness in behalf of the claimant, taken and sworn to by Henry J. Thornton with document marked A. J. S. No. 1 annexed thereto was filed;

(Vide page 3 of this Transcript)

San Francisco Sept. 6<sup>th</sup>. 1853.

Case No. 314 Called; The cause for the claimant read the evidence; argued, submitted, and taken under advisement by the Board.

San Francisco Dec. 13<sup>th</sup>. 1853.

In the same case Commissioner Alpheus Fitch delivered the opinion of the Board rejecting



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The claim:

(see page 21 of this Transcript)

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3.  
Petition of  
Miguel Abila

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To the U. S. Land Commission for the ascertaining  
and settling of private Land Claims in California  
The petition of Miguel Abila a resident of the County  
of San Luis Obispo and State of California respectfully  
represents to your Honorable body, that having obtained  
a grant of a tract of land near the Mission of San  
Miguel in said County of San Luis Obispo on the 10<sup>th</sup>  
of May 1842, and having his stock of Cattle much  
increased in the course of the following years, he made  
and presented a petition in writing to the Prefect of  
the District of Santa Barbara on the 26<sup>th</sup> of February  
1846 soliciting the grant of a tract of land immedi-  
ately adjoining the one, formerly so granted to him  
That said Prefect on the 8<sup>th</sup> of March 1846 referred  
to the matter to the respective Judges of San Luis Obis-  
po for information and that the same on the 13<sup>th</sup> of  
April 1846 reported in favor of your petitioner  
That thereupon said Prefect transmitted all the  
documents relating to said petition to Pio Pico, then  
Governor of California, and that Pio Pico on the 29<sup>th</sup>  
of April 1846 declared your petitioner the owner of  
said land and directed the proper documents to be  
executed and delivered to your petitioner  
And your petitioner further saith, that his said first  
petition, the Prefect's reference the Judges report and  
the decree of Pio Pico together with a map of the prem-  
ises are on file in the Archives of California now in  
the possession of the Surveyor General of the United States  
of America for the State of California, and that duly  
certified Copies and translations are herewith respect-  
fully submitted and prayed to be made a part of  
this petition - But that owing to the revolution in  
the year 1846 and to the invasion of the Americans  
into this Country, the original grant itself as well  
as Book of record in which said grant was recorded  
were lost or destroyed, and that your petitioner is ready  
to prove the execution of the same



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And your petitioners further saith that said land is  
situate in the present County of San Luis Obispo  
North of the Mission of San Miguelito and is described  
as follows, Commencing at a point about one league  
North of the North East Corner of said Rancho of San  
Miguelito, near to a few large rocks and a cross -  
Thence running along the boundary line of the Rancho  
de los Osos West to a point one league North of  
the point where the Coyote del Techo strikes the boundary  
line of One Juan Wilson & the Northern boundary line  
of San Miguelito, thence along said Northern boundary  
line to the Northeast Corner of said Rancho San  
Miguelito and thence back to the place of beginning  
containing altogether two square leagues more or less  
And your petitioners further saith, that from the time  
of obtaining such grant, he has always been in the  
quiet and peaceable of it and has exercised full  
and undisturbed Ownership, without being interfered  
with by any person claiming paramount title to his  
own.

He therefore claims to be the rightful Owner of said  
Land and prays that your Honor in consideration of  
the premises will confirm and validate his title  
thereto

Clark Taylor & Beck

Filed in office August 31<sup>st</sup> 1852

Geo. Fisher Secy



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Deposition of  
Nich. A. Den

San Francisco Jan'y 22<sup>d</sup> 1853

On this day before Lewis Harry J. Thornton came  
Nicholas A. Den, a witness in behalf of the claimant  
Mequel Abila petition No. 314 and was duly sworn  
his evidence being given in English  
The U. S. Associate Law Agent was present

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Questions by claimant

Quest. 1<sup>st</sup> What is your name age and place of residence  
Answer. My name is Nicholas A. Den my age is forty  
years and my place of residence Santa Barbara

Quest 2<sup>nd</sup> Look at the document now shown you  
purporting to be an original letter from Pio Pico to  
Don Mequel Abila dated May 7<sup>th</sup> 1846 marked  
Exhibit 1 and now attached to your deposition  
State whether you are acquainted with the signature  
therein and whether it is genuine

Answer. I have examined the document above exhibited  
marked Exhibit 1 and filed with this deposition  
I have no doubt of its genuineness - I am well ac-  
quainted with the hand writing of Pio Pico having  
often seen him write, and state that his signature  
to said document is his genuine signature; the body  
of said document I think is also in the hand writing  
of the said Pio Pico -

N. A. Den

Sworn to and subscribed before me this 22<sup>d</sup> of  
January 1853

Lewis Harry J. Thornton Comr

Filed in office Jan'y 22<sup>d</sup> 1853

Geo. Fisher Sec'y



1846

Expediente promovido por el Ciudadano Miguel Abila en pretension de un pedazo de terreno en un poblacion del de San Miguelito.

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Señor Subprefecto del partido  
de Sta Barbara

Sta. Barbara Mayo  
8 de 1846

Miguel Abila natural  
de este Departamento resi-  
dente en el Puerto de San  
Pase al Juez en  
Miguelito perteneciente  
fectivo de San Luis  
a San Luis Obispo. Con  
Obispo, afin de que  
el mas profundo respeto  
y como mejor haya lu-  
gar me presento y digo:  
Que en la posesion juri-  
dica q. se me dio del  
Terreno nombrado San  
Miguelito, entre algunos  
sobrantes que resultaron  
se hallan algunas tierras  
hasta la presente val-  
didas que estan compen-

Pase al Juez en  
fectivo de San Luis  
Obispo, afin de que  
informe si el  
terreno que solicita  
el interesado en la  
presente instancia  
se le puede con-  
ceder sin que re-  
sulte en perjui-  
cio de tercero

Carrillo

didat en mi terreno, que son unas Lo-  
ruenas, y Sierras frutivoras que se hallan  
de la casa de mi rancho al rumbo del  
N. las cuales corren la linea como de O a  
O. las mismas que tratumban (se que  
consta en el Diccionario que dividen en la  
acompana) hasta ponerse a linea de unos  
peñascos y una Cruz que estan en la  
misma linea en ambos costados del Ca-  
mino que va de San Luis para San Mi-  
guelito, cuyo peñascos se me señala  
en por lindero en la posesion que se me  
dio los que dividen las tierras que quedan  
al establecimiento de las miad las cuales  
unidas a mi demas terreno vienen a cua-  
drado corriendo la linea directa desde los  
peñascos mencionados hasta ponerse al  
frente y a linea recta de la cañada y abra-  
va llamada del Nudo el que consta

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9  
en mi posesion ser lindero para la parte  
del N. y lindero haora con Don Juan  
Wilson

Por todo lo que suplico a V. que aten-  
diendo a mi numerosa familia se sirva  
tenerlo en consideracion y se digne con-  
cederme el aumento de la parte de Tierra  
ya indicada como esta en el dicho P. N.

A. V. humildemente suplico se sir-  
va elevar esta a donde conviniera y acce-  
der a esta mi solicitud por lo que escribiere  
gracia y justicia. Sirviendose escribir esta  
en papel comun por no aver del que  
corresponde.

San Miguelito 26 de Febrero  
de 1846

Miguel Avila

Yrrespuento de la antecedente soli-  
citud y atendiendo a su decreto mas-  
ginal de 8 del p. p. Marzo en q. se  
previene informe a cerca del ob-  
jeto q. en ella se indica. Digo q. las  
tierras q. se mencionan a mas de las  
per sus cientes al interado, son valdidas  
y no tienen ningun otro pretendiente  
q. con anticipacion sus haya pedido;  
en tal motivo soy de parecer q. le  
pueden ser adjudicadas p. estas, co-  
mo el mismo indica, contiguas a  
su terreno, esto es si la Superioridad  
lo juzga conveniente.

San Luis Obispo Abril 13 de 1846

José de Jesus Pico





Segun el expediente promovido por el interesado, y el informe que antecede esta Sub-Prefa cree no haber embarazo para qd se le conceda el terreno que solicita, a la parte que usque, a menos que el Exmo. Sr. Gobernador disponga lo que sea de su Superior agrado.

Sta. Barbara Abril 18 de 1846

Anas<sup>to</sup> Carrillo

Angeles Abril 27 de 1846

Segun pide el interesado libresele el titulo por la Secretaria de Gob<sup>o</sup> que haga que la propiedad de la parte

Pico  
JL

*Jose Julian Maf*



Office of the Surveyor General of the United States for California

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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 custody a portion of the archives of the former Spanish and Mexican Territory or Department of Upper California do hereby Certify that the five preceding and hereto attached pages of tracing paper numbered from one to five inclusive and each of which is verified by my initials (S. D. K.) exhibit true and accurate Copies of certain papers on file and forming part of the said archives in this Office

In testimony whereof I have hereto signed my name Officially, and affixed my private Seal (not having a Seal of Office) at the City of San Francisco Cal, the 31<sup>st</sup> day of July 1852

Sam<sup>l</sup>. D. King  
Survey Gen Cal.

Filed in Office August 31<sup>st</sup> 1852  
Geo. Fisher  
Secy

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Sr. D.<sup>no</sup> Migl. Avila

Aug.<sup>o</sup> Mayo 7 de 1846

Muy Sr. Mio y Primo

Doc. H. S. J.  
annex to the  
Depositions of  
Nicholas A. Don

Como no se habia pres-  
entado oportunidad hasta hoy para  
acusarle el escribo de su apreciable crea-  
cion V. diezmos y cincuenta, y tengo el gusto  
de notificarle que a virtud de los buenos  
informes que aparecen en el Expediente  
promovido por V. en solicitud de dot-  
acion de Ganado Mayor en las Lomas  
o Sierra que se halla contigua a su  
rancho por el Sumo Jefe se ha  
entendido ya el titulo que asegura su  
propiedad; mas como de un dia a  
otro debo marchar para el Puerto de  
Monterrey y demas puntos del Norte  
he creido mas prudente estener su  
titulo hasta tener el gusto de entre-  
garlo en propia mano

Servase pues saludas a la  
familia toda y tengo la satis-  
facion de respetarme su apmo.

Pio Pico

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Sr.

Don Miguel Avila

S.<sup>o</sup> Luis Obispo

Filed in office June 22<sup>d</sup> 1853

Geo. Fisher  
Secy.

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Expediente furnished to the Cetero Miguel Abila  
upon his Solicitation for a tract of land as an extension  
of San Miguelito

For Sub Prefect of the Department of Santa B. I  
Miguel Abila, a native of this Department and a  
resident of the Port of San Miguelito belonging to  
San Luis Obispo, present myself with the deepest  
respect and in the best possible manner and say  
that when judicial possession of the Rancho of San  
Miguelito was given to me, there appeared to remain  
among the residue a few tracts of land which lie  
between my land and the common lands all which  
are surrounded by mine. Those tracts consist in a  
few low hills, and fronted mountains, which are north  
of the houses on my Rancho, run from East to West  
and which according to the map annexed hereto  
cross the land until they lower themselves near to  
some rocks and a crop which stands in the same  
line with the road itself, which leads from San  
Luis to San Miguelito. Those rocks were pointed  
out to me as a boundary marker in the judicial  
possession which they gave me, and they divide  
the lands which separate the lands of the Mission  
from my lands, and which if united with my lands  
will give them a square form from said rocks  
to the end, and to the straight line of the Canales  
and the river called Techo, which latter one is  
along to my judicial possession the Western boundary  
my line of my property towards that of Juan Wilson  
I therefore pray that in regard to my numerous family  
you will please to grant me in consideration of the  
premises that additional piece of land as shown  
by the accompanying diagram. At the same time  
I pray submissively to transmit this petition to its  
proper place, and to grant my request, whereby I

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will obtain benefit and justice; And condescend to accept this on common paper, there being not the corresponding stamps - paper to be had

San Mequetets 26<sup>th</sup> Feb. 1846

Mequel Ables

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Obliged by the foregoing solicitation and in accordance with the marginal decree of the 8<sup>th</sup> of March per in which the information in regard to this subject is contained, I say, that the lands mentioned as own and above those which belong to the interested party are common or waste land, and have no other claimant, who might have pretensions for them since I am therefore of opinion, that they can be granted to him as they connect with his lands as it appears if the Superior Chief should find it advisable to do so

San Luis Obispo April 13<sup>th</sup> 1846

Jose de Jesus Pico

According to the Expediente, forwarded to the interested party and according to the foregoing information, this Subprefecture believes that there is no objection (hindrance) why the land solicited for by this party should not be granted to him, or at least why his Excellency the Governor should not dispose of it according to his Superior will & pleasure

Santa Barbara April 18<sup>th</sup> 1846

Angel Carrillo

Angeles April 29<sup>th</sup> 1846

Let the interested party have his title as he prays, through the Secretary of this Government who shall proceed according to the requirements of the matter

Pico



The Land petitioned for will contain two square leagues more or less

(Map)

Scale of 3000 Varas - Towns of San Miguel

A. Spring of a river

B. Current of water

C. River with water

D. Low hills

E. Road from San Luis to San Miguel

F. Arroyo del Pecho & boundary line towards  
Juan Wilson

G. Boundary line towards the lands of the  
Canadas de los Osos

Filed in office August 31<sup>st</sup> 1852

Geo. Fisher Secy

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Miguel Abila } For two square leagues of land  
 vs } adjoining the place called San  
 The United States } Mequeto belonging to the  
 Claimant in San Luis Obispo County

In May 1842 a grant was made to the claimant of  
 the place called San Mequeto and on the 22<sup>d</sup> of  
 February 1846 said claimant presented his petition  
 to Governor Pio Pico for a grant of the land now in  
 question being two square leagues in quantity and  
 adjoining the premises embraced in the first grant.  
 The evidence before the Commission consists of a  
 true copy of the Expediente from the Archives  
 and a letter to the claimant proved to have been  
 written by Pio Pico dated May 7<sup>th</sup> 1846. The Expedien-  
 te contains the petition for the additional grant  
 which was presented to the Subprefect of Santa  
 Barbara. Information being duly obtained that  
 Officer forwarded the papers to the Governor with  
 a favorable report, who thereupon acted to the  
 Expediente the following -

Angels April 29. 1846

Let the interested party have his title as he prays  
 through the Secretary of this Government who shall  
 proceed according to the requirements of the matter  
 Pico

Here the Expediente closes, and there is no grant into  
 decree in the case or proof given that any was  
 issued to the party. A letter is given in evidence signed  
 by Governor Pio Pico dated May 7<sup>th</sup> 1846 and directed  
 to the claimant, informing him that the title had  
 been made out, but that he thought it more prudent  
 to return it until he could deliver it in person,  
 which he expected to be able to do in a few days. This  
 is the substance of all the proof in the case. There  
 is no pretence - it is not even alleged in the petition  
 that any grant or documentary evidence of title of any  
 character was ever delivered to the claimant or issued



by the Governor - Giving the strongest possible effect to the testimony, it is the case of a grant made out by the Governor, but never delivered to the party in interest or issued from the public office, of the Government - Does this constitute proof of property in the land which can be confirmed by this Commission? The Treaty of Guadalupe Hidalgo guarantees the property of the citizens of the former Government and their rights under the treaty to a confirmation of Land titles rest on this word - The Supreme Court of the United States have held property when the word is thus used to include both perfect titles and Expectable interests in lands - The law organizing this Commission defines the interests which entitle a party to confirmation of Land to be a right or title derived from the Spanish or Mexican Government - It is not sufficient that a claimant show that he has made application for a grant or that measures have been taken by Government to ascertain his qualifications to become a grantee or that the Governor is willing to accede to his application and has directed accordingly - He must have done that which gives rights to the party either legal or equitable to hold the land, and if any thing further is needed to perfect his title, to claim it of the Government - The memorandum or decree of Concessions as it is sometimes called entered by the Governor on the margin of the Expediente gives no such inceptive title - It is intended not as a grant, and in its effect is but a memorandum to the Secretary to prepare the proper papers for the signature of the Governor under the Custom here, it was never regarded as a title - It was never delivered to the party, nor has a copy of it been introduced <sup>in any case</sup> as evidence of title - The very words of that before us shows that it was intended for no such purpose - The inceptive



rights of the parties to land must be regarded as having under both the law and custom of the Country their commencement in the issuing of a document in evidence of his rights to the applicant until this is done the whole thing rests in the discretion of the Governor and the applicant requires no title legal or equitable from the government - The letter of Governor Fico seems to show that the title paper had been prepared, and had not been delivered to the party and expressing his intention to deliver it in person - If the rules of law as between individuals in regard to the delivery of a deed applies in this case the proof does not seem sufficient to give the claimant - The mere declaration of the party after making a deed that he intends to deliver it has never been held a delivery of it *State vs Wells & Conn R 39* - It was still entirely within the control of the grantor and it could destroy it without a violation of any legal obligation - And the grantee could claim no rights under it as an instrument conveying title to him - But viewing the objection in regard to the making of the title paper, there is another difficulty in this case - The letter is not produced - the only substitute for it must be evidence of its contents we know nothing of the contents of the grant if one was made but - and while we know that it could not have been a perfect title, we have no evidence to show whether the party had performed any duty which it had devolved upon him, if such a title paper was made for delivery to the party a record of it would be made in the Official Book of titles, but we have no evidence of it from that source and no proof that search has been made in the Archives for it - We have no evidence if such a grant was made, of the boundaries and limits of the land therein described and consequently by no means of knowing whether it was a grant of



premises as described in the petition or not. The conditions of the grant and not the decree usually define the land intended to be granted. A memorandum in this case, on the Expediente indicates the quantity granted to be two leagues, but nothing is given in evidence to show what portion of the land described in the petition was to be taken, or whether that was to be determined by a judicial measurement. In either case the claimant has given no evidence by which the land is designated, and can be separated from the national domain.

The claimant in this case has shown no occupancy, improvement or cultivation of the land which he claims and no evidence of any Act on his part which either indicates that he believed himself to be the owner of it under a grant or performed any of those duties which were made a consideration for the concession of the lands. He is of opinion that he has not shown himself entitled to a confirmation.

Filed in office Dec. 13<sup>th</sup> 1853

Geo. Fisher Sec'y

Miguel Abila }  
vs }  
The United States }

Decree

In this case on hearing the proofs and allegations it is adjudged by the Commission that the said claim of the petitioner is not valid and that application for a confirmation thereof is therefore denied.

Alpheus Selch }  
Thompson Campbell }  
R. Lee Thompson }



Office of the Board of Commissioners,

To ascertain and settle the Private Land Claims in the State of California.

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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 *four* - pages, numbered from  
1 to *4* inclusive, to contain a true, correct and full Tran-  
script 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, Case No. 3111 on the Docket of the said Board,  
where

*Miguel Abila* is  
the Plaintiff against the United States, for the place known by  
the name of *San Miguelito*

In Testimony Whereof, I hereunto set my hand  
and affix my private Seal (not having a Seal  
of Office) at San Francisco, California, this  
*Twelfth* day of *September*  
A. D. 1854, and of the Independence of the  
United States of America the seventy-ninth

*G. Fisher*





74

U. S. DISTRICT COURT,  
*Southern* District of California.

No. ~~75~~ 74 Docket

THE UNITED STATES,

vs.

*74*  
*Miguel Abila*  
*for San Miguelita.*  
*2 Sq. Leagues*  
*San J. Luis Co.*

TRANSCRIPT OF THE RECORD

FROM THE  
BOARD OF U. S. LAND COMMISSIONERS,

In Case No. *314*

Rec<sup>d</sup> 15 Sept /54  
Filed, 16 Sept /54 185

*McLay*  
*Sp. Clk*

74

*74*





On appeal from the Board of U. S. Land-Commissioners.  
Case No. 314. } In the Southern District.

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Sir,

Please to take notice,  
that the claimant in the above case  
will prosecute the appeal therein.

Yours respectfully,  
Campbell, Taylor & Beckley  
Atty. for claimant

San Francisco  
Dec. 8<sup>th</sup>, 1854.

To the Clerk of the  
U. S. District Court  
Southern District of California.



No 74  
U. S. District Court  
Southern District of  
California. —

Case No. 314. —

Notice of appeal  
from the Board of U. S.  
Land Commissioners —

Filed Dec. 12. 1854.

J. E. Farr.  
Clerk.

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George Campbell  
in the District of California

United States District Court  
Southern District of California

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Miguel Abilla  
appellant } No 74 S-C  
vs } San Miguelito  
The United States  
appellee } No 314 Land Commission

To Campbell & Taylor San Francisco  
Attys for Appellant  
Sirs

You will  
please take notice that on the 7<sup>th</sup>  
Inst a Motion was filed in said Court  
on behalf of the Appellee to dismiss  
the above entitled cause from the  
docket for want of prosecution -  
And that by order of the Court  
the same will be heard on Thursday  
20<sup>th</sup> of January 1859

J. P. Fitchell  
U.S. Dist. Atty

U.S. Atty office  
Dec 15<sup>th</sup> 1858



I have served this writ personally by  
Copy upon Alexander Campbell of  
the law firm of Campbell & Taylor in  
the City of San Francisco on the 19<sup>th</sup>  
day of January 1859

San Francisco  
Jan 19<sup>th</sup> 1859

P. D. Solomon  
U.S. Marshal  
By John G. Williams  
Deputy

No 74  
U.S. District Court  
Southern District of California

Miguel Ariza  
as Appell  
The United States  
appellee

Notice of Motion to dismiss

Due service of Copy  
admitted this day by  
U.S. Marshal, Northern  
District of Ca<sup>l</sup>.

Filed Jan 26, 1859,  
J. G. Sims Clerk  
for W. D. Stetson Deputy



United States District Court, Southern District  
of California

Regular Term Term A.D. 1863  
Monday June 10, 1863

Miguel Abila.

<sup>m</sup> Appellant  
The United States

No # 44

Appellee

"San Miguelita"

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Now on this day comes the United States by J. C. Whiting  
U. S. Dist Atty, and the Appellant failing to appear either  
in person or by Attorney, on this case being called, On  
Motion of J. C. Whiting U. S. Dist Atty.

It is ordered, adjudged and Decreed that the  
Decree of the United States Board of Land Commissioners  
rendered in this cause be affirmed and held as a final  
decree, and that this cause be ~~and the same~~ <sup>except in this case</sup> hereby  
dismissed for want of prosecution, and the Claim  
of Appellants to the lands herein, rejected and  
denied

Thus done and signed in open Court this the 15<sup>th</sup> day  
of June A.D. 1863

Hetcher M. Deight  
Judge U. S. Dist Ct. S. Dist Cal



No. 44  
U. S. Dist Ct  
South Dist Cal

Miguel Abela

vs

The United States

Deceit

Filed June 15, 1863

John S. Wheeler  
Clerk