

CASE No.

357

NORTHERN DISTRICT

A LOT OF LAND

TWO. HUNDRED BY FIFTY VARAS GRANT

ROLAND GELSTON

CLAIMANT

LAND CASE 357 ND

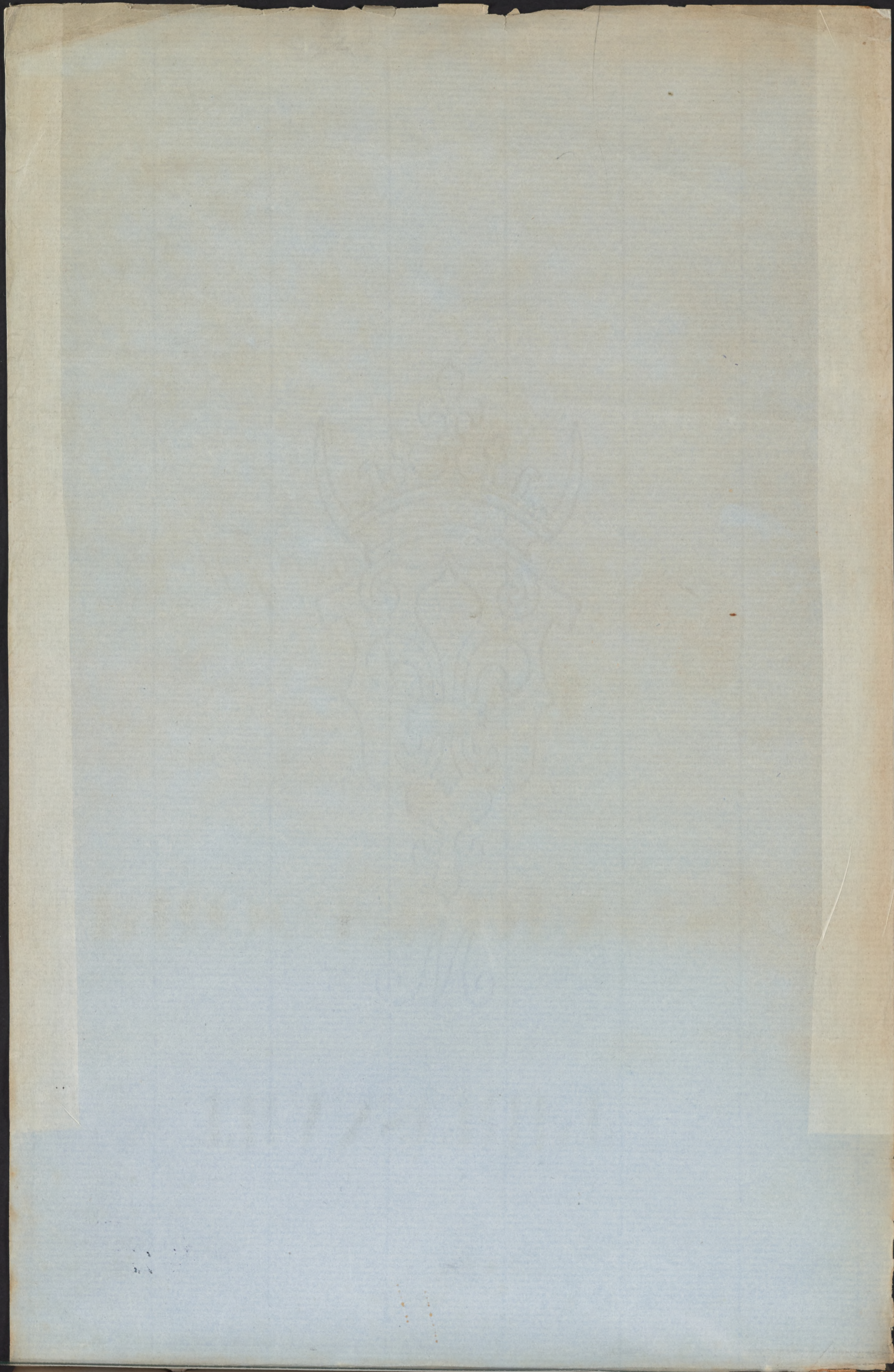
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July



TRANSCRIPT
OF THE
PROCEEDINGS

IN CASE

NO. 712.

Roland Gelston

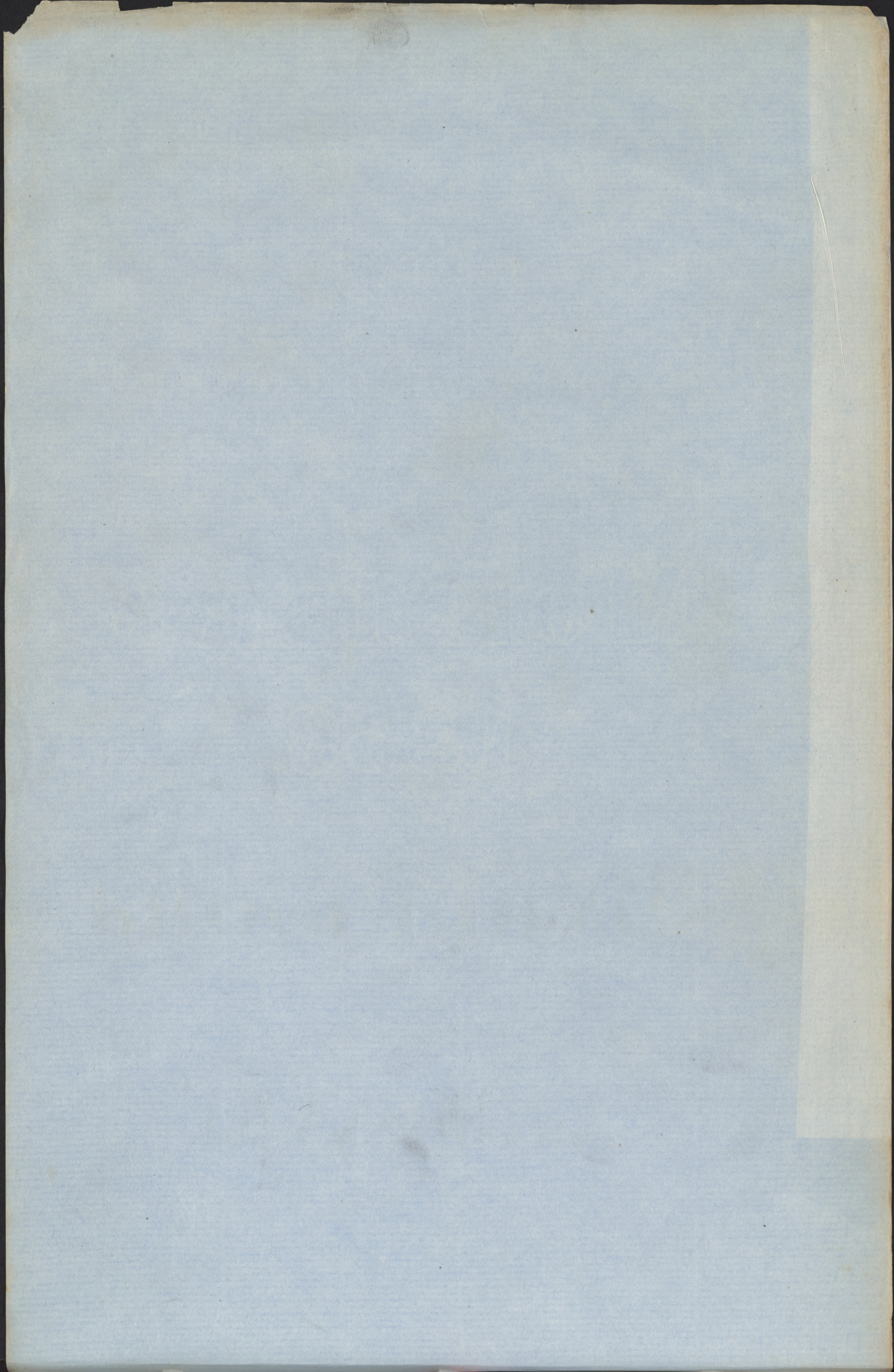
CLAIMANT

VS.

THE UNITED STATES, DEFENDANT,

FOR THE PLACE NAMED

A lot of land two hundred by fifty acres.



Office of the Board of Commissioners,

To ascertain and settle the Private Land Claims

IN THE STATE OF CALIFORNIA.

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Be it Remembered, that on this second day of March, Anno Domini One Thousand Eight Hundred and Fifty-three, 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 Roland Gelston, for the Place named a lot of land two hundred by fifty varas was presented, and ordered to be filed and docketed with No. 712 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 January 2^d 1855.
Case no. 712, Roland Gelston for a lot of land in the county of San Francisco, was ordered to be placed at the foot of the 4th class cases on the trial docket.

San Francisco, January 29th 1855.
In the same case the deposition of Henry S. Ford, a witness in behalf of the claimant, taken before Commissioner Peter Sott, was filed;

(Vide page 6 of this Transcript.)

San Francisco, January 29th 1855.
In the same case the deposition of Jose Castro, a witness in behalf of the claimant, taken before Commissioner Peter Sott, was filed;

(Vide page 11 of this Transcript.)

San Francisco February 2^d 1855.

In the same case the deposition of John J. Vieget, a witness in behalf of the United States, taken before Commissioner Peter Sott, was filed;

(Vide page 10 of this Transcript.)

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San Francisco February 5th 1855.

In the same case the deposition of Jacob P. Seese, a witness in behalf of the United States, taken before Commissioner Peter Sott, with documents marked "Exhibit A. P. S., B. P. S., & C. P. S., annexed thereto, was filed;

(Vide page 25 of this Transcript.)

San Francisco February 8th 1855.

In the same case the deposition of John B. R. Cooper, a witness in behalf of the Claimant, taken before Commissioner R. Aug. Thompson, was filed;

(Vide page 46 of this Transcript.)

San Francisco Feb'y 10th 1855.

In the same case the deposition of William D. Davis, a witness in behalf of the Claimant, taken before Commissioner Peter Sott, with documents marked Exhibits A. P. S., B. P. S., annexed thereto, was filed;

(Vide page 52 of this Transcript.)

In the same case the deposition of Francis Moellus, a witness in behalf of the United States, taken before Commissioner Peter Sott, was filed;

(Vide page 49 of this Transcript.)

San Francisco March 3^d 1855.

In the same case the deposition of John B. R. Cooper, a witness in behalf of the United States, taken before Commissioner Alpheus Felch, was filed;

(Vide page 63 of this Transcript.)

San Francisco March 19 1855.

In the same case the depositions of Vicente Miramontes, William A. Richardson and Levi Parsons, witnesses in behalf of the claimant, taken before Commissioner Alpheus Felch, were filed;
(Vide pages 66, 70 & 71 of this Transcript.)

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San Francisco March 20 1855.

Case no. 712 was submitted on briefs and taken under advisement by the Board.

San Francisco Sept. 4 1855.

In the same case Commissioner R. Aug. Thompson delivered the opinion of the Board rejecting the claim;
(Vide page 93 of this Transcript.)

and the following order was made, to wit:

(Vide page 113 of this Transcript.)

or

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5-

United States Land Commission

Petition,

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Your Petitioner Roland Gelston at present residing in the City of San Francisco respectfully represents to Your Honorable Board that he claims a certain lot or parcel of land situate and being in the City of San Francisco, said lot or parcel of land is two hundred (200) varas long by fifty (50) varas wide and is more particularly described and designated on the diagram herewith filed and is that lot designated by blue lines on said diagram -

The said lot was duly granted and ceded to me William Gulnac on the 1st day of December 1838 upon a petition and payment by him of the customary Municipal tax or fee to the Ayuntamiento of Yerba Buena,

All of which will more fully appear by inspection of the original grant petition and receipt of said payment now in the possession of Your Petitioner and of which copies are herewith also filed.

Said William Gulnac entered into the possession of said lot and occupied the same by virtue of said grant and on the 13th day of August 1850 conveyed the same by deed to Your Petitioner for a valuable consideration -

The documents above referred to have all been duly recorded in the Office of the Recorder of the County of San Francisco -

And Your Petitioner

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claims said lot of land in virtue of
the aforesaid grant and the conveyances
of the same by the said grantee William
Gusnac to him and prays that the same
may be confirmed.

Dated San Francisco March 1, 1853.

Filed in Office March 2, 1853.

(signed)

Geo Fisher Secy.

United States of America

State of California

San Francisco January 25, 1853

This day came before Peter Gott Com-
missioner for taking testimony to be used
before the Board of U S Land Commis-
sioners in said State Henry L Ford a witness
on behalf of the claimant. Roland Weston
in case No 412 on the docket of said
court and said witness being sworn
deposed as follows.

Deposition
of
Henry L. Ford

The U. S. Associate Law Agent is present.

Questions by Mr Sackard for claimant

1. Question. What is your name age and
residence?

Answer:

My name is Henry L
Ford My age 31 years My residence in
Colusi County California.

2. Question.

State whether you know

the tract of land claimed in this case
and if you state how you know it and
describe it!

Answer.

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I know the said tract of land
In November 1843 I was in this place
then Yerba Buena stopping at the house
of William Henckley and I received a
letter from William Galuae requesting
me to repair a fence around a piece of
land he had, he stated that said Henckley
would show me the lot of land he
(Galuae) claimed.

I showed Henckley the
letter and he took me to what is now near
the corner of Montgomery and Sacramento
streets in this City. Hee from that point
showed me a tract of land which was
fenced in with an oak brush fence. There
was a house on the lot on the side up
towards the hill as near as I now can
tell that house was about where the
south west corner of Kearny and Sac-
ramento Streets now is.

The brush fence
ran from that house down to the
"Hudson Bay Stone" which was about
where the centre of a hundred year lot
would be cornering on the north west
corner of Sacramento and Montgomery
streets. thence the fence extended southward
by as near as I could judge from the
eye about 50 bars along the line of
Montgomery Street thence westwardly
about 200 bars passing near the house
of John Fuller thence northwardly to a point
which I believe to be about 35 bars

about Kearney Street on Sacramento Street and thence eastwardly down to said house on Gubnaes land so as to enclose said house.

I repaired the fence in one place and left it open for a path from Sullus house to said Hudson Bay Stone as Mr. Henckley advised me to do so.

3. Question.

State whether said William Henckley mentioned by you is now living? Answer.

Said William Henckley died in June or July 1846 here in San Francisco.

I was then at Sausalito I was a Captain of Mounted Riflemen holding a U.S. Commission as such and sent my Lieutenant Samuel Gibson over here to arrest said Henckley as a Mexican Civil Officer. Lieut Gibson returned to me with the intelligence that said Henckley was dead.

4. Question.

Is said William Gubnae now living? Answer.

I believe he is dead. I have been informed that he died at San Jose I think that it was in 1833 that I first heard that he was dead. He must have died about 1851.

Cross Examined by W.S. Associate Lucy Hunt.

1. Question.

Had you known said Gubnae before you came to Yerba Buena in 1843

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If you how long?
Answer.

I became acquainted with him about the 20th of the 25th of Sep-
tember of the same year, I staid at his
house in San Jose' about 3 weeks from
that time,

2. Question.

Where was Galnac when
you received the letter from him.
Answer.

The letter was dated at San
Jose'. I suppose he was there.

3. Question.

What means have you of
ascertaining the present location of the
boundaries of the lot in question where you
say the brush fences were?

Answer.

I ascertain them from my
recollection of the points where the Henderson
Bay Store stood and also the place
where said Julius Heuser stood.

I have been in this city
off and on ever since that time and the
Henderson Bay Store still stood there
in 1849 after the present streets were
laid out.

The last time I recollect
seeing it was in May or June 1849 or at
least the last time I took notice of it.

I think Heamards Block
on Montgomery Street was then being
built. I do not think it was finished and
there were some buildings and a Store on
the North East corner of Betsey and
Montgomery and several other buildings

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around which I have noticed. So particularly as to how I remember minutely -
4. Justice.

Were Sacramento and Kearney Streets laid out as they now run at the time you speak of in 1849?

4. Justice objected to us the Survey was public and official and matter of record.
Answer.

I think that were. I cannot say how they were marked where they were not built on. I had seen a map of the town and understood it had been run out and that represented those streets running as they now do.

3. Justice -

Did you ever go round these boundaries to notice their particularities.

Answer.

Yes I went round the place fence and examined it and repaired it where it was broken.

6th Justice.

Did you ever ^{measure} see the land or see it measured?

Answer.

I never did either -

Re Examined by Mr. Sackard.

1. Justice.

Described the position of the North East corner of said Galna's brush fence as it relates to the present locality of the streets of the city there at the present time.

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Answer.

I judge it was some 3 or 4 feet West of Montgomery Street in Sacramento Street and as near as I can recollect it would have some two feet out from the South Side of Sacramento Street on the side walk there was an alley wide enough for a California Cart to drive through say 12 or 14 feet in width between this brush fence and the fence of the Henderson Post Store lot.

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Henry L Ford,
Subscribed and sworn to
before me on this 25th
day of January AD 1855.
Peter Lott

Commissioner.
Filed in Office Jan 24, 1855.
(Signed) Geo Fisher Secy.

Deposition
of
Jose Castro

United States of America
State of California 3/30.
San Francisco Jan. 24, 1855.

This day came before Peter Lott, Commissioner for taking testimony to be used before the Board of W & Land Commissioners in said State Jose Castro a witness on behalf of the claimants Roland Getton, in case No 412 on the docket of said Board and said witness being sworn deposed in Spanish which was interpreted into English by the interpreter to said Board as follows -

The U S Associate Law Agent is present.

Questions by Mr Peckard for Claimant.
1 Question.

What is your name and residence?

Answer.

My name is Pasi Castro and age 46 years My residence in Monterey California -

2. Question.

State what civil office if any you had in the Department under the Mexican Government in 1839.

Answer.

I was Prefect of the First District in said Department.

3. Question.

Did your Jurisdiction as such Prefect embrace the territory upon which the City of San Francisco now stands -

Answer.

It did and extended as far North as Sonoma.

4. Question.

Did you know Francisco de Haro, if you state if you know whether he had any civil office in your District in 1838 if you what office?

Answer.

I did know him he held the Office of Alcalde of the Municipality of San Francisco in 1838.

5 Question.

Are you acquainted with

the hand writing of the said Francisco de Haro if you state your means of knowledge and look at the document now shown to you marked A P L as an exhibit to this deposition and state whether his signature therein written is genuine.

Answer.

I know his hand writing and have seen him write and his signature in this document I believe to be his own genuine signature!

Q. Justice.

State whether you have ever seen this said document before if you under what circumstances?

Answer.

I do not recollect ever to have seen it before.

7. Justice.

Did you know William Gulmae the grantee in this case in 1839?

Answer.

Yes I know him from about 1832 or 1833 and on to 1839.

8. Justice.

Did you know Cetyl's son John Fuller in 1839?

Answer.

Yes I know him there.

9. Justice.

Do you recollect of a suit being appaled to you respecting this grant in question as Prefect aforesaid in 1839 between said Fuller and Gulmae?

Answer.

In February or March 1839

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I was here in Yerba Buena on my way to Sonoma making an official visit round my District and said Gutnac and Sully presented themselves before me in the presence of one William Kemekley and represented that they had a dispute about the boundaries of certain lots which had been granted to them by the Alcalde and wished me to decide their dispute. I referred the matter to William St. Richardson and Jose Rodriguez and Jose Maria Covarrubias then my Secretary to adjust said boundaries with orders to have a certain number of varas between the lots of these persons and those of Jacob J. Luce for a street and that there should be no appeal from this decision.

10 Question -

State whether the document A. J. L. already exhibited to you describes the same lot which on that occasion was claimed before you by said Gutnac's answer.

On that occasion neither party described to me the land he claimed only and complained that the other had got over a certain number of varas on his land but I believe it to be a description of what Gutnac then claimed.

11 Question -

Did said Richardson Rodriguez and Covarrubias report to you what they did in the premises and did you approve their report?

Answer.

They settled the dispute referred to me what they had done and I

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 approved this report and the parties were
 satisfied -

Cross Examined by U S Associate Land
 Agent.

1. Question,

How was your approval
 of this report conveyed to the parties.
 Answer.

The parties and said referees
 all came to me together to make known
 the settlement of their dispute and I
 approved of what had been done.

2. Question -

Did the report that made
 to you contain any description of the
 land if yes what was it?
 Answer.

No there was no description
 of the land the parties merely agreed
 that the boundaries between them as
 designated on the ground by said Com-
 missioners should be their boundary.

3. Question,

What power had a Prefect
 to settle disputes between land holders
 in a town?

4. Question objected to as matter of
 law.

Answer.

The Prefect had full
 power to adjust such matters the law
 conferred on him authority to distribute
 the common lands of Pueblos.

José Castro.

Subscribed and sworn to before
me on this 24th day of January
AD 1855.

Peter Lutt

Commissioner

Filed in Office Jan 24, 1855.

(Signed)

Geo Fisher Secy.

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United States of America
State of California

San Francisco February 2, 1855

Deposition

of
John J. Wright

This day command was sworn before
Peter Lutt Commissioner for taking
Testimony before the Board of U S
Land Commissioners in said State John
J Wright a witness for the U S in case
No 412 Roland Gelston Claimant
and said witness deposed as follows
to wit -

Mr Packard is present for Claimant.
1. Question.

What is your name age
and residence?

Answer.

My name is John J Wright
My age 55 yrs. My residence in San
Francisco County California -

2 Question.

How long have you resided
in California and what has been
your business during that residence?

Answer.

I have resided in California

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Since 1834 I have been Master of vessels
a Sea paying man which was my
business before I came here.
3 Question -

Have you ever been
engaged in Surveying if you when and
where?

Answer.

I was five years engaged
in Surveying in Batavia East Indies
as an official Surveyor.

4 Question -

Did you ever reside
in Yerba Buena if you how long
Answer.

I lived in Yerba Buena
I considered it my home since 1839.

5 Question -

Did you ever make a
map of Yerba Buena if you when
for whom and under what circumstan-
ces.

Answer.

I made a map of said place
in the winter of 1839. It was at the request
of Francisco Guerrero the Alcalde who
told me he had spoken to the Governor
about it -

I was then living at the
house of Jacob P. Lewis on the hill. The
map was made with a view to bring
the houses and fenced lots as much
as possible into the block and to con-
form to the lines of the streets. I noted
the names of all the occupants and
houses then in the place on the map -

The map embraced the

the land from the Southern part of
Fuller lot which is now the North
side of California Street, as far North
as what is now Pacific Street, in this
city and East and West from Montgomery
to DuPont Street taking in also the lots
of Richardson and Jacob J. Luse.

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I gave the Map to Said
Guerrero and he approved it and it was
used and recognized as the Map of the
town till the Americans took the place
and made new Maps.

Q. Justina,

Did your Map show the
position of Fuller House and the house
called the Henderson Bay Leachmans' house,

Q. Justina depicted to by Leachmans,
Leachman,

Answer,

Yes, My Map showed the
position of both, the latter was Luses
house.

The Henderson Bay Stone was
where the North West corner of Montgomery
and Sacramento streets now is and their
house was where Commercial Street is,

Fuller house stood on the
block embraced between Montgomery
California, Kearny and Sacramento
Streets nearer to California than Sacramento
and nearer to Kearny than Montgomery
Street -

Q. Justina -

Look at the Map now
shown you marked "H P L" as an
Exhibit to this deposition and filed

in Case No 74 Nov 5, 1853 and State
whether you recognise as a correct deline-
representation of the objects and localities
of which you have been speaking,

7th Question objected to by Claimants
legisled.

Answer.

It represents as near as possible
my first map except in the Portsmouth
Square here it is reduced from the 100
varas square which I made it to 50
varas square which is wrong in all
other respects it is correct.

This is a copy of my
map of Yerba Buena with slight altera-
tions. The Hudson Bay house and
Pulley house are here represented.

8. Question -

Did you know William
Gutmae if you how long, and where did
he reside? -

Answer.

I knew him from my first
residence in this country. He lived
when I knew him in the Pueblo of San
Jose.

9th Question.

Did he often visit Yerba
Buena and where did he stay when
here?

10th Question objected to by Claimants -
legisled -

Answer.

He seldom visited the place
and when he did he stayed at different

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houses he sometimes came to my house but generally lived at Fuller's house. He and I were friendly and had business together sometimes,
10. Question.

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Do you know of Gamae ever having claimed any land or built any house or fence in Yerba Buena or in this city -
Answer.

I never knew that he had claimed any land here when I made my said survey nor of his having built any house there ever at that time nor such house or fence if there had been I should have marked it on my map. Nor did I know of any such claim or improvements till about 1846. I heard some talk about Gamae having some such claim -

11 Question.

State all the improvements you now recollect as having existed from the time you came here till 1843 upon the land now embraced between Montgomery California Market and Sacramento Streets.

Answer.

When I made the said map the only improvements on said block was Fuller's house. I never saw any fence round his house and from that time till 1843 while I was permanently here I never saw any other improvements on that block.

Cross Examined by Mr Packard for claimant -

1. Question.

In what sense did Governor approve the map as you state in your answer to 3rd Question in Chief?
Answer.

He approved it verbally when I showed it to him he merely said it was good. There was no other mode of approval adopted by him then.
2nd Question.

How do you know it was recognized as the map of the town and was there no other map used as such.
Answer.

I know the plan was followed in the granting of lots and I never saw in those years any other map or plan in use, Capt Patys lot was granted and so was a lot to Peter Shornback by this plan and others I cannot say particularly how and by whom these grants were made.
3rd Question.

Had the Prefect anything to do with the order to you to make the map or with the approval of it after you had it.
Answer.

No, I had nothing to do with the Prefect in the matter.
4th Question.

Were you not absent from San Francisco during some part of the years 1843 and 1844?
Answer.

I was here all of the year 1843 till November. I then went to

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Lima and returned here in the Summer of 1844.

J. Austin.

Was there no fence in front of Fuller's house up to the year 1843.

Answer.

I mean to say there were no fences around Fuller's lot in that time. He had cleared away a small piece about his house and put the brush around the cleared spot forming a kind of enclosure on the front side of his house which was north towards Sacramento Street. He left a line of bushes standing alive like a hedge which formed that side of his enclosure.

This was the true description of the place when I made my map or plan and I think it remained so till 1843.

The hedge in front of the house was from 20 to 25 yards from the house, the hedge was parallel to the present line of Sacramento Street.

C. Austin.

How long was that hedge from East to west.

Answer.

It was about 20 to 25 yards long which was the size of the cleared spot round the house.

J. Austin.

What guided you in fixing the limits of Fuller's lot as you laid them on this map?

Answer.

I was guided by information

from Fuller himself he claimed and understood him two 100 vara lots as appear in the map and marked Fuller lot and the one west of it adjoining. I know nothing of Fuller's title. I only know he told me he claimed the land as described. He showed me no title. I asked him for none.

8. Question -

When Governor ordered you to make the map did he give you any instructions related to lots already granted or ungranted or any other instructions how to form your plan.

Answer.

No he gave me no such instructions. He asked me if I would do him the favor to make a plan.

Re examined by W S Associate Law Agent.

1. Question -

State whether you had a grant of land on Kearney Street if you where was it located according to the map herein exhibited "H P L" and according to the Streets as they now run.

Answer.

I obtained a grant which was made to me by Governor by order of the Governor about 1840 for a lot 40 varas square and I took only 100 varas by 50 varas. It was on the west side of Jacob P Lusi's lot. It embraced what now lies on the east side of Kearney Street all the way from the

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Street to Sacramento Street running
back Eastwardly 50 acres from Kearney
Street which would now take 50 acres
on the North Side of Sacramento Street
and 50 acres on the South Side of Clay
Street the East line of my lot running
parallel with the East Side of Kearney
Street cut the way through from Sacra-
mento to Clay Streets. The lot on the
Map marked "Diogit" represents my
lot.

2^d Question -

What is the size of the lot
of Nicole P Luse to which you refer?
Answer:

One hundred acres square on
the east side of Montgomery Street
marked Luse on the Map.

3^d Question -

Who claimed the land
on the South Side of Sacramento Street
opposite to your said lot.

Answer.

John Fuller claimed it.

Cross Examined by Claimants Counsel.
1 Question -

What was the Character
of his claim?
Answer.

All I know about it was
that he claimed it and I never heard
any body question his right to it.

John J. Diogit.
Subscribed and sworn to
before me on this 2^d day of

before me on this 20 day of

25-

February 22 1855.

Peter Lott Commissioner -
Filed in Office Feb 2. 1855.

(Signed) Geo Fisher Secy.

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Deposition of
Jacob P. Luce

United States of America
State of California

San Francisco February 3. 1855.

This day came before Peter Lott
Commissioner for taking testimony before
the Board of U S Land Commissioners
in said State Jacob P Luce a witness
in behalf of the U S in case No 412 where
in Roland Gelston is claimant and
said witness being sworn deposed as fol-
lows -

Mr Packard appears for claimant.

Question by U S Associate Land
Agent.

1. Question.

What is your name
age and residence?

Answer.

My name is Jacob P Luce
My age years My residence Monterey
California -

2. Question.

How long have you resi-
ded in California -

Answer.

Twenty one years -

3. Question -

Did you ever know and
John Fuller if you when and where?

Answer.

I know John Fuller first in
Montreal in 1834. He came to Yerba
Buena now San Francisco, in brief
employ in 1836 and this was his home
where his family lived till the time of
his death he died at Sacramento about
1848 as I was informed -

4. Justinian -

Did you ever know of
said Fuller having obtained a grant
of land if you where was it located -

H. Justinian objected to by Claimants
leaves it.

Answer.

Yes. I know of his having
a grant of a piece of land one hundred
Acres square on the south side of
Sacramento Street in this City as the
City now stands -

5 Justinian -

How was said lot bounded?

3th Justinian objected to by Claimants
leaves it.

Answer.

It was bounded on the north
by what is now Sacramento Street and
on the west by Kearney Street.

6 Justinian.

What means had you of
knowing that said Fuller obtained
said grant

Answer.

I obtained the grant myself
for Mr Fuller and paid the fees

attended it
of the Justice.

How long after the
issuing of the grant did Fuller locate
it and what improvements if any did
he make on it.

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Q. Justice objected to his Claimants
Counsel.

Answer.

Immediately on receiving the
grant he located it. He built a house
on the land and lived on it.

The house was a
frame house, a very comfortable house
to live in. Fuller lived in it with his
family - He cleared away the bushes
made a brush fence to keep the cattle
out & dug a well close to the street,
S. Justice.

After this grant was
obtained and after Fuller built said
house where did he live and how long?

Answer.

Fuller lived in a house of
mine while he was building his said
house he was in my service - He was
say or three months occupied in building
his house. He then moved into his
own house and made it his home his
family lived there till he died.

Q. Justice.

When did you leave this
part of the country and where did
Fuller's family then reside?

Answer.

I think I left here in

February 1849. Fuller's wife was then
house keeper for Capt Lewis druff, but
she still kept the property here spoken
of or at least it was understood at that
time still to belong to Fuller family -
10. Question -

Was Fuller ever put in
Syndical possession of this land if you
knew whom and when?

10th Question objected to by claimants -
Answer.

Syndical possession was given to
him by Ignacio Martinez the Alcalde
I was present and Blas Angelino the
Syndico was also present this was
soon after or about the same time that
Fuller got the grant.

11 Question -

Did you ever know
William Gutnac if you know when and where.
Answer.

I know said Gutnac first
in Montreal in 1834. I did not see him
after that till I saw him here in Yerba
Buena in 1836. After I came to settle
here. I know him here as a trader who
came down to trade with me. I was then
a merchant here. He lived in the Pueblo
of San Jose so long as I kept any
trace of him - I think the last time
I saw him was in the Spring of 1851.

12. Question -

Do you know of said Gut-
nac ever having located any land
in Yerba Buena?

12th Question objected to claimants
caused.

Answer.

I never knew of his
locating any land in Yorba Buena
nor did I ever know of any land
being located here for him by any
officer or any person.

13. Question.

Did you ever hear said
Gulnac say that he intended to locate
any land if yes what land?

13. Question objected to by claimants
caused.

Answer.

I recollect that in 1839 said
Gulnac had a petition written asking
for a lot of land in Yorba Buena to the
westward adjoining my said Fullers
land as I understood Gulnac to say

I mean that Gulnac
told me that he was going to locate
the land west of Fullers. I will relate
what occurred.

I stepped into Gmt
Office and found said Gulnac and
a number of others in conversation
upon the subject of said Gulnac
coming here to establish a blacksmith
shop at there says none here and it
was a good opening for that Ausmire
and Gulnac remarked that he was
going to locate at the place I have
mentioned on the west of Fuller.

14. Question -

State the location of your

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own lot and also that John I. Proffit
Answer.

My lot was a 100 vara
lot on what is now the South west
corner of Clay and Montgomery Streets
in this City and Capt. Proffitt acquired
me on the West end was on the East-
side of Kearney Street between Clay and
Montgomery Streets.

15. Question.

What was the condition
of Sacramento Street after Fuller built
his said house as to occupation.

15. Question - Objected to by Claimant.
Answer.

What was the condition of
Sacramento Street of
Answer to 15th Quest.

The Street was not
quite open nor used as a street for
there was a lake of water where the street
now runs into Montgomery Street a
place where Fuller had made a dook to
build me a kitchen -

16. Question -

State the condition of
this piece of land between Fuller's lot
and Proffitt's and your own from 1837
up to the present time?

16. Question Objected to by Claimant.
Answer.

I have always known it open
as a throughfare and street with the
exception of mine varas which was
granted as an addition to my lot -
but the Alcalde Guerrero to the

Hudson Bay Campment.

1st Question -

On which side of Fuller lot did the old mission road pass across.

On the western side of it.

Cross Examined by Reliants Counsel.

1. Question.

Look at the document now shown to you marked "A.P.L." as an exhibit to this deposition and state whether it is a deposition given by you as it purports in said document.

1. Question objected to by U.S. Associate Law Agent who objects to the introduction of the paper.

Answer.

Yes this is a deposition given by me at the time it bears date and accordingly as it is certified therein.

2nd Question -

State how said Fuller located his said lot as you have stated in answer to 1st Question in Chief -

Answer.

The Alcalde. I think it was Martinez pointed out the lot and it was measured off for Fuller.

3rd Question -

Describe how the said juridical possession was given to Fuller.

Answer.

It was given as was customery at that day by measuring the lot

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with a cord 50 varas in length. Fuller was present and the Alcalde, the Syndico and myself and I think Mr Spear there were a number of persons.

That measured off the 100 varas square, and drove stakes down at the corners. The first stake I think was driven at the North West corner of the lot which is now the South West corner of Montgomery and Sacramento Streets. That measured westwardly 100 varas, along said Sacramento street, drove a stake and measured southwardly 100 varas. I did not go in the bushes with them any further. I left them there.

4th Question -

Are any of the parties whom you name as being present at that occasion?

Answer.

The Alcalde and Mr Spear are dead. The Syndico said was Robert Bodger and may be living there yet.

5th Question -

When was this judicial possession given?

Answer.

I think it was in the Spring of 1834. I cannot remember the day or the month -

6th Question -

When did you first see the brush fence you mention in your answer to 4th Question and what was its position?

Answer.

It was in the same year 1837 and it still existed when I left here in 1841. The fence ran along a line parallel with Sacramento Street east of West some 12 or 15 feet back from the present street. It only enclosed a small portion of his lot about the house so as to keep the cattle away from his premises.

The east part of the fence was some 40 or 50 yards east from Montgomery Street the enclosure from east to West I think was about 60 yards. The whole lot was covered with brush and he cleared this space around his house and made a kind of hedge or brush fence of that which he cleared off.

7th Question -

Who was present in your store when Fulmer was talking about making the location of your house mentioned.

Answer.

There was a John Rainsford and Fuller and Guido Misa, a captain in the Mexican Service. I cannot now recollect any others who were there.

8th Question -

How far was Fullers house from your fence on the South

Answer.

I should think it was 50 or 60 yards. Fullers fence on the North side of his house was about 25 yards from his house.

9th Question -

Do you know the hand writing of William McHarris of you

State your means of knowledge and look at the document now shown to you marked B P L as an exhibit herein and state whether his signature thereon is genuine.

4th Question objected to by U S Associate Law Agent.

Answer.

I know his hand writing I have seen him write and believe this to be his genuine signature -

Re Examined by U S Associate Law Agent.

1. Question.

You say that Fuller lot extended westward to the present street called Kearney street and you also say that the first stake at the time Judicial possession was given was placed at the South West corner of Montgomery and Sacramento streets do you mean the present South West corner of said last mentioned streets if so explain this inconsistency.

1. Question objected to on the ground that counsel suggest the answer West-Maps shall give.

The counsel for the Government stated that perhaps the corner of the street was not at the same place then where it now is. this is the only suggestion made -

Answer.

Fuller lot did extend westward to Kearney Street but I have been misunderstood if I am represented as saying the North East Corner of Fuller lot and the stake there drawn driven were at the present corner of Sacramento and Montgomery Streets.

His North East corner was some fifty yards to the west of what is now the South West Corner of Montgomery and Sacramento Streets for I recollect well that it was about half way down the side of my lot from East to West and my lot was 100 bars and fronted on Montgomery Street -

2. Question -

State whether you did not depose on the 14th day of July 1854 in the case of Roland Gilston vs John Shirley et al then pending in the District Court of the 4th District of this State as follows.

"I know of a grant of land made to John Fuller in the year 1834 of a 100 bar lot. It was located in the year 1834 on the South side of the Sacramento Street 50 bars west from Montgomery Street running up to what is now called Kearney Street and running back to California Street as appears in the document now shown to you as Exhibit "C. P. L." filed herewith -

Answer.

I did so testify at that time and this document represents my testimony correctly -

J. P. Luss.
Subscribed and sworn
to before me on this 3^d day
of February AD 1855.

Peter Lott

Commissioner.

Filed in Office Feb 5. 1855.

(Signed) Geo Fisher Secy.

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Merba Bana Dec 29. 1838

William Gutnach Esq.

Dear Sir -

The Alcalde

called upon me the other day for
payment of your land and I paid
him accordingly, twenty one dollars
(21[¢]) & charged it to your acc. if this
is right please to let me know.

Capt Henckley gave me
to understand that he had made a
purchase of you for 20 or 25 fanegas
of land if I recollect right \$50 or
40 a tallow but as yet it has not
been received by the Russian whom
the same was intended for please write
me if you please about this if you
please by first chance.

With respect to your wife & self
I remain Yours most truly,

Nathan Spear

per William H. Davis

Filed in Office Feb 5. 1855.

(Signed) Geo Fisher Secy.

"B. P. L."
Exhibit to
Depo of
J. P. Luss.
Feb. 5. 1855.

Fourth District Court,

"C. J. L."

Exhibits to
deposition of
J. P. Lusk,
Feb. 5, 1855.

Roland Gelston

vs
John Shiras & others

Roland Gelston

vs
Joseph Benjamin & othersQuestion - What is your name ago
and occupation?Answer, Jacob J. Lusk, 45 years
of age, a farmer.Question - How long have you been
resident in California?

Answer, Twenty years.

Question - Were you ever acquainted
with one John Fuller & if so where &
at what time?Answer, I was acquainted with
John Fuller first at Monterey in 1834
In the latter part of 1836 he came with
me as my servant to this place then
called Yerba Buena.Question - Did you ever know of a
grant of land being made to John Fuller
& if so did said Fuller locate said
grant & if so where?

Ans.

I know of a grant of land

made to John Fuller in the year 1834 of a hundred acre lot. It was located in the year 1834 on Sacramento Street South Side fifty yards west from Montgomery Street running up to what is now called Kearney Street and running back to California Street.

Question

How long after the taking out of the grant did Fuller locate it and what improvements if any did he make

Answer. Immediately after taking out the grant it was located. Fuller built a house upon it and fenced it in on the front side of Sacramento Street, dug a well on the lot.

Question.

After taking out the grant and building the house you have spoken of where did Fuller reside and how long has he resided.

Answer.

Fuller after building the house lived there till he died. he died I think in the year 1844. His family continued to live on the premises up to the year 1849. I left this part of the country in the year 1849.

Quest.

At what period in 1849 did you leave this part of the country and did you or not leave Fullers family in a possession of said premises -

Answer.

In the commencement of 1849 I left - In January - I left Fuller

and Family in occupation of Said premises.

Quest.

State if you know whether Fuller was ever put in Judicial possession of the aforesaid vacant lot & if so at what time?

Answer.

Yes Sir - he was put in Judicial possession in the year 1834 and I paid the money myself to the Judges for putting him in such possession.

Quest.

Were you ever acquainted with one William Gutnac if so where and at what time.

Answer.

I was acquainted with William Gutnac. I first became acquainted with him in the year 1834, in Montreal after that in the year 1836, I established myself in Yerba Buena & Gutnac used to trade with me and lived at that time in the Pueblo of San Jose.

Quest.

Did William Gutnac ever remove from San Jose and take up his residence in Yerba Buena and if so when and for how long a time.

Answer.

He never removed from San Jose and took up his residence in Yerba Buena to my knowledge.

Quest.

Was a grant of land in Yerba Buena ever made to William Gutnac & if so was such grant ever

located, and if located where?
 Answer.

I recollect the circumstances of William Gulnac's making a petition for a grant of land in Yerba Buena which was I think in the year 1835.

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I think I have a slight recollection of his saying that he intended to locate the graving on to Julius property somewhere about where the west line of Kearny Street now is to the south west of my lot.

Question.

Was a location of said grant clear to your knowledge made by said Gulnac?

Answer.

No Sir Not to my knowledge

Question —

Disclosed where your own lot was at that time?

Answer.

My lot was a lot laid on the map of this City as 100 square lot No 1 fronting on Montgomery Street & between Sacramento and Clay Streets.

It was formerly marked as 100 square lot No one, the present numbers are different —

Question.

Were you acquainted with a lot in Yerba Buena known as Boyets lot and if so where was it situated —

Part of Circumstances of grant objected to by Defts. . .

Answer.

The first lot granted to Progit was a 50 vara lot situate at the present South East corner of Belmont & Kearney and the last lot was a fifty vara lot adjoining running directly South of East mentioned lot at present North East corner of Sacramento & Kearney St.

Question -

What was the condition of Sacramento Street after Fuller his house as to occupation, was it vacant or occupied land between Kearney and Montgomery Streets?

Answer.

It was vacant land between Fuller's land & Gifts & Mine.

Question -

Was it vacant land in the year 1837 between Fuller's land and Gifts & your own and how long did it so continue vacant.

Answer.

It was vacant land in 1837 till 1839, then a part of the town was laid out and surveyed and this land was left as a street the present Sacramento Street.

Examination -
Just.

Were you acquainted with the handwriting of William Gurnac & Francisco de Haro if so state your means of knowledge.

Ans.

Yes Sir - I was by seeing them

write and written communication -
Trust.

Look at paper marked Petition
& Grant A & say whether the signatures
of said Gutmae and de Heere are genuine.
Census.

Yes I believe the signatures of
de Heere and Gutmae are genuine.
Q.

Are you acquainted with the form
in which Alcalde grants were made
at that time.

Objected to parcel proof of form of
Alcalde grants by Defts.

Ans.

Yes, Sir. The petition to grant
"A" was the usual form in use and I
have seen. The petition and the decree
of the Alcalde on the margin thereof con-
stituted one form of grant.

Q.

Were they not often made in this
form.

Objected to as to form as above
by Defts.

Ans.

This was the usual form in
Yorba Buena. In other places I have
seen different forms.

Q.

Can you designate any object as
the boundary of Fifth & Grant on
the Northern Side?

A.

I don't know as I can. The well
which Fuller dug was not immediately

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 au his northern line it was 12 or 15
 feet South of said line. His house
 was about the Centre of his lot.

Q.

Where did you understand Gutnaes
 lot to be located.

Answered to form by Defts.

A.

I understood from Mr Gutnaes's
 lot was westward of Fuller's & lay South
 West of my lot.

Object to declaration of Gutnaes by
 Defts.

Q.

How did Gutnaes lot lie with
 reference to yours?

Ans.

It lay in a South west direction
 so he informed me.

Object to Gutnaes declaration by
 Defts.

Q.

How was your lot designated?

Ans.

It was designated on the map
 of 1839 as Number one.

Quest.

When was Sacramento Street
 first laid out.

It was Ans.

It was in the latter end of
 1846.

Quest.

Do I understand you to say
 that Gutnaes lot lay between your
 lot & Fuller's.

Ans.

Mr. I dont say so. Sacramento Street did not extend beyond to the westward of Kearney in the years 1834 1835 and up to the summer of 1839.

Quest.

What was the face of the ground where Galnaes lot was located according to the description you have given above.

A.

A part of it was covered with European oak, the Southern side, the Northern side in a low green marshy valley. The Southern side of Galnaes location was a hill. The valley run along down Sacramento to Montgomery Street the valley run west to the present Dupont Street.

The old Mission road passed through the ground which Galnae claimed as his location.

How far was that old Mission road from the point where it passed through Galnaes location to Fullers lot.

I should judge about 50 yards

Q.

On which side of Fullers lot did the Mission road pass?

A.

On the eastern side -
Direct resumed.

Q.

Do you know anything in reference

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to the location of Guinaes lot except
what he told you -

Ans.

No Sir.

I know nothing except
that -

Q.

The well that you have spoken
of. State whether or no it was built
by Fuller for his own use.

Ans.

Yes Sir - It was -

D. P. Luce,

Subscribed and sworn to
before me this 17th July 1852
W. Lynch Not Pub.

Shood to be read as testimony in
the trial of aforesaid actions subject
only to such exceptions and objections
as might be made were the witness
personally present.

McAllister & Rose

Attys for defendants,

W. C. Howard for Plff.

Filed in Office Feb 5. 1853,

(signed)

Geo Fisher
Secy.

United States Land Commission
San Francisco Feb. 5, 1855.

Deposition of
John B. R.
Cooper

On this day before Commissioner
R. Aug. Thompson came John B. R.
Cooper a witness on behalf of the
claimant Roland Gelston in case No 412
who after being duly sworn deposed as
follows.

Present Claimants Atty and
United States Associate Law Agent.

In answer to question Witness
states his name is John B. R. Cooper
his age sixty years and residence San
Mateo San Francisco Co. California -
1. Question by Claimants Counsel,

Did you know Wm Galnae
the original grantee of the land claimed
in this case if you state all you know in
relation to the occupation or cultivation
by him of any lands in the town of
Yorba Buena, describe such lands and
state the time of such occupation.
Answer.

I know him well. My acquaint-
ance with him commenced about twenty
years ago. I know that he occupied and
cultivated land in said town somewhere
about the year 1843.

I do not know the
quantity of land he occupied. It lay in
the valley or gulch between the lands
of Fuller and Capt. Biaget commonly
known as Blusher.

There was a fence
around it. It was in extent about 50
or 100 yards and was cultivated as a

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garden for vegetables. There were two small dwelling houses on it such as were common in the country at that time. He also had a well dug on it.

Cross Examined by United States Associate Law Agent,
1 Question by Same.

Did Gutmae have a family and if so where did they reside
Answer.

He had a family he resided with them at the house of John Davis a Carpenter then living in Yerba Buena the houses all the lot spoken of in my preceding answer were inhabited by persons who cultivated the garden.

2^d Question by Same.

How do you know that these persons cultivated the land for Gutmae.
Answer.

I was ^{well} not acquainted with any of them and furnished him with seeds from my own garden. They informed me they were cultivating for Gutmae. I also received the same information from Gutmae.

3 Question by Same.

What kind of enclosure was around said land.

Answer.

It was partly of red wood and partly of brush.

4. Question by Same.

What was the distance from Negrets to Fuller's fence

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Answer.

It was about one hundred yards.

3. Question by Same.

What was the distance from the house of the Henderson Bay Co to the house of Gubnae.

Answer.

About two hundred yards.

4. Question by Same.

How far was Gubnae fence from Bigots lower fence?

Answer.

Capt Bigots lower fence formed the upper fence of Gubnaes lot.

5. Question by Same.

How far was Gubnaes house from said fence.

Answer.

It was twenty odd yards.

John B R Cooper,
Sworn to and Subscribed
before me Feb 8. 1855.

R. Aug. Thompson
Clerk.

Filed in Office Feb 8. 1855.

(Signed) Geo Fisher Secy.

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United States of America
State of California

San Francisco July 10, 1853.

Deposition
of
Francis Mellus

This day came before Peter Gott
Commissioner for taking testimony before
the U S Land Commission in said State
Francis Mellus a witness for the U S
in case 712 Roland Getston Claimant
and said witness being sworn deposed
as follows.

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Mr Packard appears for Claimant

Questions by U S Law Agent.

1. Question - What is your name age
and residence?

Answer. My name is Francis Mellus
My age 31 years My residence in Los
Angeles County California

2. Question - State when you came to
California and where you have prin-
cipally resided in said State.

Answer. I came to California to
live in January 1839 from that time
till 1846 I followed the sea as a clerk
in the trade between San Diego and
San Francisco. I may say my home
was during that period on ship board
from February 1846 to March 1847. I
was absent from the State and from
the last date to December 1847. I was in
San Francisco. Since which time I
have resided in Los Angeles.

3. Question.

State who possessed houses here when you arrived in 1834.

Answer.

There was to the best of my belief of houses then in what was called Yerba Buena, Mr. Spear on the corner of what is now Clay and Montgomery Streets, Mr. Luss on Montgomery between what is now Clay and Sacramento Streets.

Capt. Richardson's on what is now Dupont known as the Adole "Jack the Soldier lived in a northerly direction from said Luss's house but I cannot fit its locality with reference to the present streets -

A house afterwards belonging to Victor Prudon made of sticks and mud plaster.

I do not know who owned it when I came, Juana Brion's near North beach and one or two wooden houses belonging to Jack Fuller situated in a southerly direction from said Luss's house. These were the only houses here then to the best of my recollection.

4. Question.

Did you know William Gutmae if you had his family and where did they reside.

Answer.

I knew him he had a family they lived in the Pueblo of San Jose. I first knew him in February or March 1834.

5th Question -

Do you know of said
Quinn ever claiming, occupying or pas-
singing any land by himself or tenants
in this City.

Answer.

I do not.

6th Question -

Did you ever know of any
land being occupied between Crofts
and Fuller -

6th Question objected to by Claimants

Attorney -

Answer.

I do not remember of any
house between Crofts and Fuller wooden
houses.

7th Question -

Did you know John C
Davis if you where did he reside in this
place?

Answer.

I knew a man by the name
of John Davis a Carpenter in York
Quinn. His house was between the present
Streets of Washington and Jackson and
Kearney and Montgomery Streets?

8th Question.

How much of your time
between 1839 and 1846 did you pass in
York Quinn.

Answer.

About half of my time some
times 6 or 8 months continuously -

Crops examined by Mr Packard for
Claimant -

1 Question -

When you stand here on these accusations did you pass your time on Shore or in water.

Answer.

On Shore and on the Bay. I was seldom absent more than two days at a time!

2 Question.

Was you ever engaged in any agricultural pursuits previous to 1846?

2^d Question objected to by W S Associate Law Agent.

Answer.

No.

Francis Mellis,
Subscribed and sworn to
before me on this 10th day
of February AD 1855.

Peter Lott Commissioner.
Filed in Office Feb 10. 1855.

(Signed)

Geo Fisher Secy.

Deposition
of
Wm H. Davis

United States of America
State of California

San Francisco February 10. 1855.

This day came before Peter Lott Commissioner for taking testimony before the U S Land Commission in said State William H. Davis a witness for the U S in Case #12 Robert Gelston Claimant. Said witness being sworn testified as follows.

Mr Packard appears for Claimant
 Questions by W L Associate Law Agent.

1. Question.

What is your name and residence?

Answer.

My name is William H C Davis
 My age 33 years My residence in
 Alameda County California.

2 Question.

How long have you lived in California and at what points.

Answer.

Lived permanently at San Francisco from July 1838 to 1850 with the exception of a few voyages off the coast and since 1850 I have lived at San Diego and in Alameda County.

3 Question -

State whether and to what extent you were acquainted with the inhabitants here at Yerba Buena San Francisco while you were thus resident here.

Answer.

In 1838 there were residing at Yerba Buena Nathan Spear and his family and Jacob F Luce, William S Kennedy John C Davis Ignacio del Valle John Fuller Juana Brown Gregorio Escalante.

These are all I recollect at present. I was not acquainted with nearly all the old settlers of the place until about 1849 and 1850 when strangers began to come in great numbers.

4th Question.

Were you acquainted with one William Gubnae had he a family and where did he reside.

Answer.

I know him he had a family and he and they resided at the Pueblo of San Jose. I was well acquainted with said Gubnae and his family he used to trade with Mr Spear then a Merchant here and I was Spears Clerk and Book Keeper.

5th Question -

Did said Gubnae ever visit Yerba Buena if you with whom did he stay when here.

Answer.

He frequently visited Yerba Buena on business. Sometimes he stopped with Mr Spear and I have seen him stop at John Fullers.

6th Question.

Do you know of said Gubnae ever cultivating or occupying any land or that he occupied any house in this place as his own or had any tenants occupying it for him in the year 1843 or at any other time?

7th Question directed to the Claimants Counsel.

Answer.

I know of no such occupancy or cultivation here by Gubnae or any tenant for him at any time.

8th Question

Did you know the precise locality of John Fullers lot and Capt John

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Profits last and if you were there and space between them and if you were it occupied or cultivated.

7th Question objected to by Claimants Attorney.

Answer.

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I know the position of John Fullerton and also of said profits there was a space between them of ground perhaps a little wider than Sacramento Street it was where that street now is in this city. That space was not cultivated it was a thorough fare. It was not occupied. It was an open space.

8th Question. Were there any settlements or improvements of any kind between the enclosures of said Knight and Fuller.

9th Question objected to by Claimants Counsel.

Answer.

There were none.

10th Question -

Did you know a John C Davis a carpenter who resided in Yerba Buena if you where was the precise locality of his residence?

Answer.

I know said Davis. He lived on the north side of where Washington Street now is in this city and near the present line of that street between Montgomery and Kearney streets about half way. He lived in that spot from 1835 when he built there till the time of his death. I do not now remember

when he died.

10. Quistman.

State accurately as you can the northern line of said John Fullis lot.

10th Quistman, objected to by Claimants Attorney.

Answer.

It was on the South side of Sacramento Street.

11 Quistman.

Do you know John B R Leapher (sometimes called "Soldier Jack" if you where did he reside.

11th Quistman objected to by Claimants Attorney.

Answer.

I know John B R Leapher who resided in Monterey and who still lives there and who have never known him called "Soldier Jack". There is an old man here by the name of Leapher whom I also know but I do not know his full name he goes by the name of Jack the Soldier, he did reside here in San Francisco. I do not know whether he still resides here or not. I have not seen him for sometime.

12 Quistman -

Do you recollect distinctly of having seen him residing here in 1843 in San Francisco -

Answer.

I think he did reside here then.

Cross Examined by Mr Packard for Claimant.

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1 Question - State your means of knowing the position of Fullers and Crofts lots.
Answer.

I owned a lot adjoining Fullers lot was here where this building (Parrots iron building) now stands and I frequently visited Fullers house and also Crofts I may say almost every day while I was here and was acquainted with the locality of all the lots that were then surveyed by Croft -

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2 Question - When did you own said lot of which you speak and how did you become the owner thereof.
Answer.

I purchased the lot of C. H. Flagg I think in 1844.

3 Question - How did you know the position of all the lots surveyed by Croft?
Answer.

I knew them by the survey which Croft made -

4. Question - Look at the document now shown to you marked "A P L" as an exhibit to this deposition and state whether you were acquainted in 1838 with Jose Rodriguez and if you did you know his hand writing and if so what were your means of knowing it and is his signature in said document genuine?

Answer.

I know a Man in Yuba County named Jose Rodriguez in 1838. I do not remember about his hand writing and cannot say whether this is his genuine Signature or not.

5 Question -

Did you not say on the 5th day of December 1850 in the District Court of this District under oath in the case of Roland Gelston vs Lambert and Frederick Lowe that you believed this signature to be the genuine Signature of Said Rodriguez?

Answer.

I have no recollection of having said so -

6 Question -

Look at the document now shown to you marked BPL as an Exhibit to this deposition and state whether it is a deposition given by you at that date.

Answer.

I remember of testifying as a Witness in this case of Gelston vs Lambert and Frederick Lowe but do not remember the whole of my testimony. I remember testifying that William Guinae never lived in Yuba County and never had a house or enclosure here. I cannot say whether this paper is a part of my testimony then or not. I recollect the substance of my testimony then as I have now stated it. I may have testified to other matters and I may not, but I do not now remember well enough to say whether this

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contains a part of my testimony then
given -
7th Question

State whether this document
A.P.L. before exhibited to you was
produced at that trial in the district
court and whether you then saw it?
Answer.

I do not remember. I may
have read it then or may not. I have
no recollection of it - I do not remember
whether I ever saw this document before or
not.

8th Question -

Look at the document
now shown to you marked "C.P.L." as
an exhibit to this deposition and state
whether you recognize your own signa-
ture and hand writing therein -
Answer.

I have no recollection of writing
this document. If I wrote it there will
be a record of it in Mr Spars books which
are still in existence as to recognizing
it as my signature -

I can only say that
it looks something like my writing in
these days but I can testify no more
clearly than this -

9th Question -

Was you a partner in
the Mercantile business of Leaud & Co
Grouins if yes when did your connection
with that house begin and end?
Answer.

I was not a partner in said
house I was a special partner of the

house of E and H Gormis for the business
in California and that business was conducted
in my own home solely. that connection
began early in 1846 and ended early in 1848.

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Re Examined by US Associate Law
Agent.

1. Question.

Look again at the document A.P.L.
compare it with the document "B.P.L." and
state whether said "A.P.L." is a document
containing a signature to which you may at
that time have sworn.

Answer:

As I have before said I do
not now know whether this "B.P.L." is a
part of my testimony then given or not.

I have stated what I
remember of the substance of my testimony
on that occasion. This may or may not be
a paper then exhibited to me but I have
no recollection of it.

William H David -

Subscribed and Sworn to
before me on this 10th day
of February AD 1853.

Peter Lott

Commissioner -

Filed in Office Feb 10, 1853.

(Signed)

Geo Fisher

Sect.

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In District Court.

Dec 5, 1851.

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Exhibit B
PL annexed
to depo of
H. H. Davis

Roland Getston

v.

Lambert

Fredrick Lound

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Plaintiff offers in evidence
petition of Mr Gutue and grant from
Hearo to Gutue dated Dec 1, 1838 attested
by Jose Rodriguez marked No 1. H. H.
Davis sworn for Plff.

I have resided here
over 12 years since July 1838. I know
Hearo, I know Jose Rodriguez. I have seen
them both write, I think this is Hearo's
Signature (showing witness first named
grant &c)

I cannot say positively as to
Rodriguez's signature, it resembles it.

I cannot say positively,
this is Rodriguez's writing. It resembles it
very much I think it is his. Hearo is
dead.

By Dep't.

I think Rodriguez is dead I
think he died in 1839 or 1840. I was with
him when he was I think Syndico and
have seen him sign receipts once or
twice -

He removed from here to
Mira Montes on the Costa I think as
soon as he went out of Office, while here
he resided at the Presidio -

By Plff -

He married a niece of Mrs

Witness but cannot recollect of his living at her house.

(Plaintiff reads to the Jury a translation of the first named grant petition &c.)

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Def't objects to this paper as to its being a grant.

Plaintiff offers in Evidence a deed from W Gutnac to Roland Getton dated 13 August 1850 same purporting to cover the premises in controversy here marked No 2.

Plaintiff offers the Evidence of Wm Gutnac taken an Interrogatories &c at San Jose on 17 October 1850 marked No 3.

Defendant objects to Gutnac's Evidence on the ground of his being interested herein and also to first second and third interrogatories -

Interrogatories and answers read subject to the subsequent decision of the Court.

Defendant objects to the reading of the second set of interrogatories and answers of Gutnac as they were taken without an order of court

Defendant objects to Plaintiff's proving by parol the giving of a receipt by the Syndic for the purchase money of grant.

Plaintiff affirms in Evidence the Interrogatories to and answers of Wm. Gumaer mentioned in Second objection of Deft and the same are read to Jury marked No 4.

Libby Sworn for Plff.

I have been in Cal^a since June 1841 I knew John Fuller until his death I know of his owning land here and building three small houses the land was over the knob on Montgomery street just.

Filed in Office Feb 10, 1855.

Signed
Geo Fisher Secy.

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Deposition of
John B. R.
Cooper

United States Land Commission -
San Francisco March 5, 1855.

On this day before Commissioner Alpheus Felch came John B R Cooper a witness on behalf of the United States in case No 412 who after being duly sworn depused as follows.

Questions by Mr Blanding Associate Law Agent.
1 Question.

What is your name age and place of residence?

Answer.
My name John B R Cooper My age is sixty one years and I reside at Monterey in California -

2 Question.
How long have you resided

in California and where did you reside
in Yerba Buena.

Answer.

I came to California in 1823
and have resided in Monterey constant-
ly since 1827. That is my family residence
I have been at Yerba Buena frequently
during the whole of that time, some
times often and sometimes less frequent.
I have been here a month or six weeks
at a time.

3. Question -

Did you know the
residents at Yerba Buena and the lots
which they occupied,

Answer.

I know the first residents
who were here and nearly all from the
time the place was first settled up to
1845 and I know the lots upon which
most of them lived.

4. Question

Did you know one William
Gutmae during the period mentioned
by you at this place. If you where did
he reside, had he a family and do you
know of his occupying or cultivating any
land at Yerba Buena under any grant
or title to himself.

Answer.

I know said Gutmae during
the time mentioned he resided at the
Pueblo of San Jose with his family
I never knew of his having any land
here at Yerba Buena or ever residing
here. I have known of his coming here
but not of his residing here.

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5th Question.

When Gungo visited Yerba Buena where did he stay?
Answer.

I do not know at what house he stayed. I have seen him at the house belonging to Captain Beaufit then kept as a Public House, This was the last time I saw him here. I did see him often at this place.

6 Question -

Did you know John Fuller and the position of his lot and the position of said Beaufit's lot? If there was there any space between their lots and if so was the land between them cultivated?

Answer.

I know said Fuller and the position both of his lot and of Beaufit's lot. There was a space between them at least. Fullers lot was not fenced up to Beaufit's whinover I have seen them. The space between them I never saw under cultivation -

Mr Sackard objects to this question and answer.

7. Question -

About at what position on the present map of San Francisco was the vacant space between the two lots of which you have spoken?

Answer.

Fullers house was about eighty yards west of what is now Montgomery Street. The vacant space that I mean was on the north side

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of said Fullus lot and was not fenced in

Questions by Mr Packard for Complainant
& Justice.

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Do you know that Gulnac
did not have a grant of land here and
that he did not have any cultivation
here.

Answer.

I never knew that he had
any land here, or that he ever had any
cultivation here.

2 Question -

How do you know the
boundaries of Fullus lot.

Answer.

I know by what it was
called and in that way I know the
boundaries but I only know that it
was called Fullus lot.

John B R Cooper,
Subscribed and sworn to
before me this third day of
March 1855.

Alpheus Fitch
Commissioner,
Filed in Office March 3, 1855.

(Signed)

Geo Fisher Secy.

Deposition
of
Wm A. Richard-
son

United States Land Commission -
San Francisco March 14, 1855.

On this day before Commissioner
Alpheus Fitch came William A

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Richardson a Witness on behalf of the
claimant Roland Gilston in case no
412 who after being duly sworn deposed
as follows -

Questioned by Mr Packard attorney
for claimant -
1 Question.

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Please state your
name age and place of residence?

Answer.

My name is William St
Richardson my age is nearly forty years
and I reside at Sancti Spiritus in California.

2. Question -

Do you know the bounda-
ries of the land claimed in this case
if you know?

Answer.

I know the frontage of
the land on the Bay and the direction
which it runs back from the Bay.

I measured the
front of the lot by order of Jose
Castro who was then Prefect in order
to settle a dispute between Gutierrez
and Fuller relative to the line between
their lots. Castro ordered me to com-
mence to measure from the South
end of the lot of Jacobo P Lusa
and first to measure off twelve
varas for a strut or alley which was
to run along the South side of said
Lusa's lot and to measure off for
the frontage of Gutierrez lot on the
Bay fifty varas more on the South
side of said strut or alley.

Fuller and Gutnac and Louarrubias were present when I measured the lot. We measured the Street or Alluv with a Spanish vara measure and the fifty varas for the lot of said Gutnac was measured with a cord which cord was measured with said vara measure.

It was in the latter part of the year 1839 that this measurement was made. Castro was at Yerba Buena at that time he was on his way to Sonoma to establish civil authority there or on his return. I do not remember which.

The line of Gutnac's lot as measured off by me for the front was on the same line with the front of said Luis's lot. The same being continued in a southerly direction -
B. L. Austin -

Did you ever know of said Gutnac exercising any acts of ownership over said lot?
Answer.

I do not know of any particular act of ownership. Except that of there was a little brush fence put along the Street or alluv and also on the front shortly after the measurement of the lot. but I do not know who put it there. Captain Fitch brought some things for said Gutnac from Cape St Lucas in Lower California where said Gutnac formerly resided and landed them on this lot. They consisted of a forge. Some iron works pack

Saddles and some raw Sugar.
 Thus were several days
 on the lot and he sold some portion
 of the articles - I should say that he
 was there at least a month himself.
 This was in the Spring
 after I measured the lot.

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Questions by Mr Blending Associate
 Law Agent.

1. Question.

Where did Gumac
 reside at the time his goods were on the
 lot.

Answer.

He resided at the Pueblo
 of San Jose his family lived there.

2. Question -

How do you know that
 said goods belonged to Gumac.

Answer.

I was Captain of the Port
 at the time and after acted as
 Custom House Officer. Captain Fitch
 said he had a parcel of freight be-
 longing to Gumac and supposed he
 could land them without trouble. I
 told him yes as they were Mexican
 goods or from a Mexican port.

My Indians helped him land them.

William St Richardson
 Subscribed and sworn to
 before me at

this seventeenth day of March 1855.

Stephen Fitch Comr.

Filed in Office March 19, 1855.

Geo Fisher Seal

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United States Land Commission
San Francisco March 19, 1855.

Deposition
of
Vicente Miramontes

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On this day before Commissioner
Alphus Fitch came Vicente Miramontes
a witness on behalf of the Claimant
in Case No 412 who after being duly
sworn deposed as follows.

Questions by Mr Sackard for Claimant.
1 Question -

Please state your name
age and place of residence?
Answer.

My name is Vicente Miramontes
My age forty six years and I reside
in San Francisco County California.
2 Question -

Did you know Jose
Rodriguez in the year 1838. If you did
he hold any civil office in that year
and if so, what office. Do you know
his signature and hand writing? If
you please look at the two documents
now here presented to you marked
A P Lⁿ Exhibit to deposition of Wm
McDaris. February 10 1855 and A P Lⁿ
Exhibit to deposition of Jose Castro
January 24, 1855 heretofore filed in this
Case and state whether the signatures
purporting to be those of said Rodriguez
on said documents are the true and
genuine signatures of said Jose Rodriguez
Answer.

I know said Rodriguez in
the year mentioned, and he then held the

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Office of Syndico at the Mission
Solvent. I know his hand writing and
have seen him write. The signatures
which appear on the two documents
mentioned, and here presented are his
genuine signatures.

Vicente Miramontes -

Mr Blanding Associate Law
Agent attending at the taking
of this deposition -

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Subscribed and sworn to
before me this nineteenth
day of March 1855.

Alphus Fitch
Commissioner

Filed in Office March 19, 1855.
(Signed)

Geo Fisher Secy

Deposition
of
Levi Parsons

United States Land Commission
San Francisco March 19, 1855.

On this day before Commissioner Alphus
Fitch came Levi Parsons a witness
on behalf of the claimant in case
No 412 who after being duly sworn
deposed as follows.

Questions by Mr Suckard for the
claimant -

1 Question.

Please state your name
age and place of residence?

Answer.

My name is Levi Parsons
My age is thirty years nearly and

San Francisco is the place of my
residence.

Q. Question.

Did you hold any
civil Office here during the year 1850.
Answer.

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I was District Judge of the
Fourth Judicial District of California
at that time. The District included
the City of San Francisco -

Q. Question.

Was there a case tried
before you in said Court in December
1851 wherein Roland Gelston was
plaintiff and Lambert and Frederick
Lowe were defendants. If you please look
at the documents now here presented
to you and marked as follows the first
marked "A P L" Exhibit to deposition
of Jose Castro January 24 1855. The
second "A P L" Exhibit to deposition
of Wm H Davis February 10 1855. The
third "C P L" Exhibit to the deposition
of Wm H Davis February 10 1855 and
state whether said documents were
produced and proven on said trial
before you and if yes by whom they
were so proven.

Answer.

I have examined said
papers. there was such a suit pending
in that year before said Court and
was tried before me with a Jury. It
was an action of Ejectment for a
piece of land in the City of San
Francisco and the plaintiff claimed
that the land in question was a part

73.

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of premises originally granted to William Guinae.

On the trial such a grant was introduced and proved and read in evidence. I am not certain but I think the document here presented "H.P.L." Exhibit to deposition of Jose Castro January 24, 1853 the same which was given in evidence on that trial. I remember that the payment of the Municipal fee by Spur to the Officer of the Town was proved by William H. Davis and that a paper showing the translation was introduced and given in evidence & I think the paper here presented marked "C.P.L." Exhibit to the deposition of William H. Davis February 10, 1853, is the identical paper.

I know that Davis testified that the paper so introduced was in his own hand writing being written and signed by him. There was also a paper given in evidence on said trial, purporting to be a receipt from the Syndico of the town for the Municipal fee which was also proved by said Davis and I think the paper here produced marked "H.P.L." Exhibit to the deposition of Wm H. Davis February 10, 1853 is the same which was there produced and proved.

Mr Blanding objects to this question and answer.

Questions by Mr Blanding Associate Law Agent.

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1. Question.

Was the proof taken on the trial of the case above mentioned oral or written, and if written have you since seen the proofs.

Answer.

I took Minutes of the testimony given by the witnesses on the trial and also took a Note of each document read in evidence. I do not know where these Minutes now are.

2. Question.

Was there anything particularly to impress on your memory the proofs taken before you on the trial of that case?

Answer.

There was. It was a case that excited great interest at the time, and it was one of the first trials here involving title under the old Mexican grants. The case were about a week trying the case and a number of Attorneys were engaged on each side.

Several suits were brought but there was but one trial had.

Levi Pearson,
Subscribed and sworn to before me on this nineteenth day of March 1855.

Stephen Fitch
Commissioner }
Filed in Office March 14, 1855.
(Signed)
Geo Fisher Secy

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1. 75

Ex. B.

Precibi del Sr Don Natan Spear la cantidad
 de veinte lince pesos a mi entera satisfacion cuyo
 entero hace otro. Sr. como apoderado del Sr.
 Guillermo Gulme y responde al Dno. Municipal
 de un Solar q. Sobrito este en la Yerba Buena
 y se concedio y dio posesion segun estilo y para
 seguridad del interesado soy este q. e firmo como
 Synchico procurador de esta Municipalidad. San
 Francisco Die 12 de 1838.

A.P.S. Exhibit to
 deposition of W.^m
 Davis. Feby. 10.
 1855.

José Rodriguez.

Recorded in the County Recorder's office I. book
 n^o 1 Spanish Records page 1. August. 16. AD. 1850.
 at 10 o'clock. a.m.

John A. Mc Gowan.
 County Recorder & J. O'Grady
 Depy.

Filed in Office. Feby. 10. 1855.

Geo. Fisher. Secy.

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2. 77

Ilustre Ayuntamiento.

San Francisco 1^o de Dbre. de 1838. El Ciudadano Guillermo Puluac
 vecino y residente del pueblo de San
 Se le concede al José Guadalupe con el debido respeto
 interesado en esta parte V. S. aparezca y oiga: que con
 instancia el solar situado a sus intereses trasladarse
 que lo necesita y en a puerto de la Yerba Buena y en
 consecuencia el Sr. course allí, suplico se le conceda un
 solar al S.E. de la poblacion de 300
 varas de largo y 50 de ancho q.
 linda por el Sur con el q. ya posee
 el Sr. Jaxon Sutter para fabricar alli
 una habitacion y una que le con-
 venga por tanto. A. V. S. suplica
 en consecuencia se sirva proveer
 segun convenga a mi pedido.
 Advirtiendo me en este papel por
 falta del q. correspondiente y yo no
 en dicha forma no proceder de
 nulidad y lo necesario.

A. P. L. Exhibito
 deposition of José
 Castro. January 24,
 1855.

Haro.

Por ausencia del Secretario.

José Prudriguez.

San Francisco. Nov^e 26 de 1833.

Nota. Entre renglones. por el Sur. = vale.

Guillermo Puluac.

Recorded in the County Recorder's office in book no. 1.
 Spanish Records pages 1. A2. 1850.
 August 16. A.M. 10. A.M.

John A. Mc Elgun.
 County Recorder.
 by Jas. O'Grady. Deputy.

Filed in Office. Jan. 29. 1855.

Geo. Fisher. Secy.

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U. S. Land Commission -

In the Matter of the Petition
of
Roland Getston,

Translation.

Translation of Original Grant.

Illustris Ayuntamiento,

The Citizen William
Gulnac Neighbor and Resident of the
Town of San Jose Guadalupe with
due respect comes before Your Honors
and States that for his personal
interest he deems it advisable to
change his present place of residence to
a point in Yerba Buena and to settle
there. He solicits you to grant him
a piece of land in the South East
part of the Town two hundred varas
long and fifty varas wide and bounded
on the South by the land occupied by
Citizen John Fuller to build a dwelling
therein and for other suitable purposes.

I earnestly entreat

Your Honorable Body that you will
be pleased to approve of this Petition
admitting it upon this paper
because of the urgent of that which is
suitable and I swear (adfirmo) you
in due form that I will not pro-
ceed maliciously.

San Francisco, Nov 26. 1835.

Guillermo Gulnac.

Translation of original Grant.

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San Francisco Dec 1. 1838.

The land solicited in this instance is granted in consequence whereof the Alcedo will have it measured and adjudicated in accordance with this decree.

(Signed)

J. J. Hearo.

In the absence of the Secretary.

José Rodriguez.

Transcription of Receipt.

Received of Mr. Nathan Shear the sum of twenty five dollars to my entire satisfaction which said gentleman has paid as the attorney of the said William Gurnee and it corresponds with the Municipal tax or fee for a piece of land solicited by him in Yerba Buena and which has been conceded to him and possession given to him according to custom and for the security of the party interested I give this and sign it as the exercise Officer of this Municipality
San Francisco Dec 1. 1838.

(Signed)

José Rodriguez

Filed in Office March 2. 1853.

(Signed)

Geo Fisher
Secy.

14th District Court.

Roland Getton }
vs }
Charles Bertrand }

"A.P.L."
Exhibit to
depo of
J. P. Luse
File 3. 1853.

City and County of San Francisco ss

L. H. Brown Plffs city herein
being duly sworn says that Jacob P
Luse is a material witness for Plff
herein, that said Luse resides at Monterey
and says he is about to leave this
city on the morrow 29th or 30th inst.
to be gone till after the trial of this cause,
and Depoant is fearful the Plff will
lose the benefit of his testimony unless
taken conditionally he therefore prays
for an order for the examination of
said witness before a Notary Public
on the 29th or 30th inst.

L. H. Brown,
Sworn this 28th July 1851.
Before me,

A. Williams
Notary Public.

14th District Court.

Roland Getton }
vs }
Charles Bertrand }

On the above affidavit
and cause shown let the testimony of
the above named witness J. P. Luse be

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taken in this cause on behalf of the Plff
before A Williams Esq Notary Public
at his Office on this 30th day of July
inst at 12 O'Clock to be read on the trial
of this cause.

July 25th 1851. San Francisco.

Geo Parsons
Dist Judge.

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10th Dist Court.

Roland Getston

vs
Charles Bertrand et al.

The above named witness
will be examined on behalf of the Plff
herein before A Williams Esq Notary
Public at his Office No 8 California
Exchange on the 30th of July inst at
12 O'Clock Noon.

July 28. 1851.

L. D. Brown
Plffs atty.

To Messrs.

McAlister & Saunders Esq.
Attys for Defts.

District Court for the 4th
Judicial District -

Roland Getston

vs
Charles Bertrand et al
City & County of San Francisco vs.

Jacob P Luse a witness produced
sworn and examined in case on
behalf of the above plaintiff in this

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712
 cause before Andrew Williams a
 Notary Public in and for said County
 at said City by virtue and in pursuance
 of an order of the Hon. Levi Parsons,
 Dist. Judge of said District which
 order is hereto annexed, being duly
 sworn deposes & says as follows,

Q.

Where do you reside and do you
 expect to leave this City & if so when?
 A.

I reside at Monterey in this
 State and expect to leave San Francisco
 to morrow morning.

Q.

Did you formerly reside in
 San Francisco then called Yerba Buena
 and if so when and when how long
 and in what part of the now City?
 A.

I did from the year 1836 to the
 year 1841. Until the year 1838 I resided
 about where the St. Francis Hotel is
 from that time till 1841 on the lot
 now bounded by Montgomery Sacra-
 -mento and Clay streets the lot
 extending up Clay and Sacramento
 Streets one hundred bars each and
 being one hundred square
 commonly called the Henderson Bay
 Company's lot and when the City
 was surveyed known and designated
 as Lot No. 1, as laid down on the map.

The Henderson Bay Co. became
 owners after me I sold to them.

Q.

From which point did the line

commence as the base from which to know where that 100 acre lot was?

A.

Corner of Claus & Montgomery, the E line fronting on Montgomery St.

Q.

Did you know Mr Gulnac?

A.

Yes Sir -

Q.

Did you know of his petitioning the authorities at Yerba Buena now the City of San Francisco for a grant of land?

A.

Nothing more than from common conversation. It was in my store at the time that the conversation occurred.

(Hepts Exhibit objects to any evidence of conversations and the following answer is taken subject to such exception -)

Mr Montaigne I think was present also Mr Prado, Anisa Mr Gulnac, these 3 gents all asked for grants of land at the same time.

That either had asked or were about to. The place Mr Gulnac said the land he had asked or had intended to ask for was situated back of my lot here not exactly back of my lot, a little south of it commencing at the South West corner.

Q.

Where did that lie in relation

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to your lot and Citizen John Fuller's lot? —

A.

It laid between me & Fuller but it extended up the valley there was a wide space at that time between me & Fuller. I don't think it could have been more than 3 or 4 bars wide between my lot & Mr Fuller's.

Q.

Please look at papers united to testimony of Mr Gulnac and purporting to be Mr Gulnac's petition and grant & say if you know the hand writing of any signatures there.

A.

I was acquainted with Mr Hearne I was acquainted with his hand writing and to the best of my belief the signature is his. This is the common form of the petition for land at that time and the grant in the margin was one of the ways of granting land at that time there were two ways of granting land.

Heft's counsel objects to the introduction of the papers & to the witness testimony as to the form of the papers.

Mr Hearne was actually here at that time as Justice of the Peace. This is his Official Signature as a Justice.

In making out official papers in this country this is the way they were Officially signed, the way the name Rodriguez is signed is the

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was he would officially sign in
the absence of the Secretary and for
him.

Q.

Where was the settled part of the
city or settlement in Yerba Buena in
1839 the date of what purports to be
Gulnaes petition -

A.

The Settlement was very much
scattered there were only some houses
here at the time. There were no houses
of what is now Sacramento St
except Mr Fullus. Mr Fullus grant
was before Mr Gulnaes not on the
map now here exhibited represents
the lot which I sold to the Hudson
Bay Co.

Cross Examined.

Q.

Where was the North Side of
Mr Fullus lot situated so far as you
know.

A.

The North Side of Mr
Fullus lot situated came down to
the edge of a well which Fuller dug
on the edge of his lot. I think the
remains of the well are there yet.

I think that well
lays about 25 bars east of Kearney
St and about fifteen bars south
of Sacramento St.

Q.

Did you understand Mr Gulnaes
lot to be west or south of your lot.

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A. South West.
Q.

Did any part of it lie back
of your lot or West of it -

Not directly west, but S. W.
lay "back of my lot" I mean I West
Fuller was a 100 Mura lot & his
house stood nearly in the centre
of his lot.
A. P. Lease.

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Sworn & Subscribed
this 31st day of July 1851.

Before me
H. Williams,
Notary Public -

We consent that the above be read
on the trial subject to all legal excep-
tions -

July 31. / 51.
Robert Greenhow,
John A. Saunders

Filed in Office Feb. 5. 1855.

(Signed)
Geo Fisher
Secy.

88

1951
HD

B

mark



89

Dud.

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This Indenture made on the thirtieth day of August in the year one thousand eight hundred and fifty between William Gulnack and Gabriel Cesena de Gulnack of the Pueblo San Jose County of Santa Clara of the first part and Roland Gelston of the City and County of Sacramento State of California of the second part, Witnesseth that the said parties of the first part for and in consideration of the sum of Fifty thousand dollars lawful money of the United States of America to us in hand paid by the said party of the second part at or before the executing and delivery of these presents the receipt whereof is hereby acknowledged both remised released and quit claimed and by these presents do remise release and quit claim unto the said party of the second part and to his heirs and assigns forever, all our right title and interest in and to all that tract of land or parcel of land or town lot situate lying and being in the City of San Francisco formerly called Yerba Buena and particularly described in a grant to said Gulnack in the Spanish language bearing date Yerba Buena (now San Francisco) November 26, 1838 duly granted conceded and delivered to William Gulnack according to custom and possession thereof given over for the particulars of which reference may be had to the said original grant,

g.v

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Hereunto annexed the title in and to the land therein described being the same intended to be conveyed by this instrument by the parties of the second part said lot being also described in the original petition of the said William Guback in language as follows addressed to the illustrious town Council to wit -

A lot to the South East of present settled part of the town, Two hundred acres long and fifty acres wide bounded on the South by a lot possessed by "Citizen John Fuller" reference also being had to said petition. Together with all and singular the tenements hereditaments and appurtenances thereunto belonging or in any wise appertaining and the reversion and reversion, remainder and remainders rents issues and profits thereof and also all the estate right title interest in the same thus described properly possession claim and demand whatsoever as well in law as in equity of the said parties of the first part of in and to the above described premises and every part and parcel thereof with the appurtenances.

To Have and To Hold all and singular the above mentioned and described premises together with the appurtenances unto the said party of the second part his heirs and assigns forever.

In Witness Whereof The

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Given under my hand and
private Seal there being no Notarial
Seal yet provided at Office the day
and year first above written -
C. J. Ryland
Notary Public,

A true copy of the original recor-
ded Aug 16, 1851, at 10 Am.

John H. M. Glynn
County Recorder,

By Jas O. Gradis
Deputy,

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County of San Francisco }
County Records Office }

I hereby certify that
the foregoing is a full true and cor-
rect copy of Record deposited and
remaining in this Office as well appar-
by reference to Liber B of Deeds page
140.

Seal

Witness my hand official
Seal this 20th day of March
A.D. 1855.

James Grant
County Recorder,

Filed in Office March 20, 1855.

(Signed)
Geo Fisher Secy

Said parties of the first part have
 amounts set their hands and seals
 the day and year first above written -

Wm Gubnack (S)

his

Isabel Ceseno de Gubnack
 Mark.

Sealed and delivered
 in the presence of

Thos. H. Ficklin

Militia Alamo -

State of California
 County of Santa Clara 3/2.

Be it remembered that
 on this the 11th day of August AD
 1851 before me a Notary Public
 within and for the County aforesaid
 personally came Wm Gubnack and
 Isabel Ceseno de Gubnack his wife
 to me known to be the persons de-
 scribed in the foregoing instrument
 and who signed the same and ac-
 knowledged that they made and
 executed the said instrument freely
 and voluntarily for the uses and
 purposes therein mentioned and she
 the said Isabel de Gubnack being
 by me made acquainted with the
 contents of said instrument on an
 examination separate and apart
 from her husband acknowledged
 that she executed the same without
 fear or compulsion from her said
 husband and that she did not wish
 to retract the execution of the same

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 Opinion of Roland Gilston vs Board by
 Conir Thompson

Lot 100 by 50 varas square
 in the City of
 The United States of San Francisco

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The petitioner in this case has offered in support of his claim the following original documents, the genuineness of which are fully established by the proofs in the case.

First, a petition addressed to the Illustrious Ayuntamiento by Guillermo Gulnac, dated November 20th 1838, setting out that the citizen Guillermo Gulnac "viciño" and resident of the Pueblo of San Jose deers it advisable for his present interest, to change his present place of residence to the Port of Yerba Buena and to settle there. He therefore solicits of the Ayuntamiento a grant of a "solar" (house lot) in the southeast part of the town, two hundred varas long and fifty varas wide, and bounded on the south by the land occupied by the citizen John Fuller, to build a dwelling thereon, and for other suitable purposes. Second - a Marginal decree entered on the foregoing petition of which the following is a translation.

San Francisco Dec 1st 1838

The building lot solicited is granted to the interested party in this instance and in consequence thereof the Alcalde will have it measured & adjudicated in accordance with the decree. (Signed) "Herrero"
 "In the absence of the Secretary"
 "Jose Rodriguez"

Third. A receipt from the Sindico of the Municipality of which the following is a translation.

"Received of Mr Nathan Spear the sum of twenty five dollars to my entire satisfaction, which the said Señor has paid as the Attorney of the said William Gulrae, and corresponds with the Municipal tax (or fee) for one house lot solicited by him in Yerba Buena and which is conceded to him, and possession given in due form and for the security of the party I give this, and sign it as Sindico Procurador of this Municipality

San Francisco December 1. 1838

Jose Rodriguez

Fourth. A copy of Deed duly certified from the Records of the County of San Francisco from William Gulrae and wife to Roland Gelston dated August 13. 1850, conveying to the latter all their right, title and interest in and to the premises, described in the foregoing title papers. The Claimant has also introduced oral testimony to show that the grantee Gulrae took possession of the lot shortly after receiving the grant and that he had a portion of it enclosed and in cultivation. The evidence however on this point is very contradictory & we think the weight of testimony decidedly adverse to such a conclusion. It is very certain that the land never was occupied in the manner and for the purposes set out in the petition for the grant.

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To the claim thus presented it is objected on the part of the Government that it is not embraced in the class of cases over which jurisdiction is conferred on this Commission by the 5th section of the act of the 22^d of March 1857 establishing this Board, and moreover that it is expressly excluded from such jurisdiction by the 15th section of the same Law, for the reason that it is a town or village lot, within the meaning of said last mentioned section, and as such the title to it, could only be presented and adjudicated in the general claim for the Pueblo lands as provided for in the same.

The 5th section of the Law referred to simply gives the Commission the power to decide upon the validity of any right or title to lands in California derived from the Mexican or Spanish Government. If this general authority stood in the law without qualification it would unquestionably give the board jurisdiction over all claims to lands in California derived from those governments, without regard to the particular channel or granting agent through which or by which the right or title to the same was made. All titles to lands in California prior to the acquisition of the country by the United States were necessarily caused or indirectly from the Mexican or Spanish Governments. Those made by city or town authorities included inasmuch as they had no power to make them, except by special licence conferred upon them, by the General or local Governments.

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for that purpose. But it was clearly the intention of Congress in the 15th section of the Act referred to to draw a distinction between the latter description of grants, and those made by the officers to whom the general subject of the disposition of the public lands was committed.

That section provides that the provisions of this act shall not extend to any town lot, farm lot or pasture lot, held under a grant from any corporation or town to which lands may have been granted for the establishment of a town by the Mexican or Spanish Government, or the lawful authorities thereof, or to any city, town or village lot, which city, town or village existed on the seventh day of July 1856: but the claim for the same shall be presented by the corporate authorities of said town &c. Under the point raised by the associate law agent, on the construction of this section, two questions are presented. The first is whether the land claimed is a town lot, farm lot or pasture lot, held under a grant from any corporation or town to which lands may have been granted for the establishment of a town by the Mexican or Spanish Governments. And secondly whether it is a city, town, or village lot, which city, town, or village existed on the 7th day of July 1856. If it is embraced in either of these classes it is clearly, by the terms of the act, excluded from the

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jurisdiction of the Commission as a separate and independent claim, but must be considered as included with other titles of a similar character presented in the general claim of the city of San Francisco for the lands of the Pueblo of the same name.

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It is not denied that the lands claimed are situated within the limits of the former Pueblo known indifferently by the name of Yerba Buena and San Francisco.

The original petition of the grantee solicits a "solar" house lot in the part of "Yerba Buena", and the grant itself, and the receipt for the Municipal tax both dated at "San Francisco", the officer executing the latter signing himself as the "Síndico" procurador of that Municipality. It is contended however by the Counsel of the claimant that although the grant was made by "Barro", then Alcalde of San Francisco, yet in making this grant he was not acting in the capacity of a municipal officer of the Pueblo, but was exercising the functions of the Prefect under the 77th and 100th sections of the Mexican Organic Law of the 20th of March 1837.

This Commission has decided in several cases that the Prefects of the Districts had authority under the 77th article of the above law, to grant the common lands of the Pueblos. The 100th article referred to provides that "during the years 1837, and 1838 the previous Alcalde or Alcaldes of the

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respective capitols of the districts in their order shall supply the temporary vacancies of the prefects commencing with those of the last year, & hereafter if there should be no Ayuntamiento the Justices of the Peace for the preceding years in the same order shall supply their places.

The organic law of the 20th March 1837 was intended to carry out & put in operation the new Constitution of 1836, by which the federal government established by the constitution of 1824 was overthrown, & the Departmental or Central system established in its stead.

By the 122nd article of that Law the Ayuntamientos were abolished in all the towns of the Republic except the Capitols of the Departments, those in which they existed in 1836.

The parts whose population amounted to four thousand and the Pueblo with a population of eight thousand.

We know historically as well as from the public archives in the office of the U. States Surveyor General that this law did not go into operation in California until the commencement of the year 1839. So obnoxious were its provisions to the people that they rose in rebellion against it expelled the officers appointed by the Supreme Government & elevated Juan P. Alvarado to the Governorship, first as President of the independent State of California and afterwards as constitutional Governor of the Territory. Finally a compromise

was effected and the authority of Alvarado as Governor was recognized & confirmed by the Supreme Government and the new order of things formally adopted and put in operation by the Territorial Deputation in their Session commencing on the 27th of February 1839, & Don Castro was duly appointed Prefect of the 1st District on the 7th of March of the same year. From these facts it is very clear that Barr, in making this grant, could not be acting in the capacity of Prefect, since no such officer had been known or recognized in California up to that date, and no District laid off or assigned over which its functions were to be exercised. But in addition to this the whole history of the case, is opposed to such an assumption. The power of the authorities of the Pueblo of San Francisco, to make grants of solares or house lots in the town was derived from the order of Governor Castro, made in pursuance of a resolution of the Territorial Deputation & addressed to the Alcalde of San Francisco, on the 26th of October 1835. By that order the Ayuntamiento of the Pueblo were authorized to make grants of lots for building houses (solares) not to exceed 100 varas square in the place called Yerba Buena, upon the payment to said Ayuntamiento of the canon or tax which may be fixed as belonging to the proprios. Then taking all the evidence of title as presented by the claimant the conclusion

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is inevitable that this grant was made in pursuance of that order and without reference to the new order of things established by the organic law of the 20th of March 1837.

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The petition of the grantee is addressed to the Ayuntamiento & prays for a solar house lot of the size which they were authorized to grant and situated in the Port of Yerba Buena.

The Alcalde makes the grant in his official capacity as the presiding officer and organ of the Ayuntamiento, and the receipt of the canon or tax is given by the Sindico Procurador of that Municipality. All of these circumstances appearing upon the face of the Claimants title papers, show ^{com} exclusively that the land claimed was held under a grant from the Corporation or Town, authorities of the Pueblo of San Francisco, within the meaning of the 14th section of the act of March 3rd 1851 and as such is expressly excepted from the jurisdiction of this Commission in this form. But even if this were not so, we cannot concur in the construction of the 100th section of the law of the 20th March 1837 as contended for by the counsel for the Claimants. That article simply provides, that during the years 1837 & 1838 the temporary vacancies in the office of Prefect should be filled by the Alcaldes of the Capitols of the respective Districts. This was clearly intended to meet a contingency which might occur

after the system had gone into operation, the districts laid off, and their capitols selected, otherwise how could it be known what town was the capitol whose Alcalde was to exercise the functions of Prefect, or over what limits they were to extend.

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When the Districts were subsequently laid off, Monterey became the Capitol of the 1st District within which the pueblo of San Francisco was situated; consequently the Alcalde of that town if any was the person authorized to discharge the duties of Prefect in case of a vacancy in the office.

These and other objections to this claim which would be entitled to our serious consideration even it necessary to go into the examination of the case upon its merits, but from the view already taken we are satisfied it is not embraced within the class of cases which have been submitted to our jurisdiction and an adverse decree must be entered.

Filed in Office Sept 5th 1855

Geo Fisher

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Roland Gelson }
vs }
The United States }

Decree

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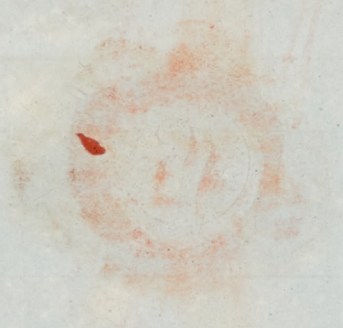
In this case on hearing the proofs and allegations, it is adjudged by the Commissioners that the claim of the petitioner is not within their jurisdiction, as defined by the act of the 3rd of March 1851 creating this Commission, and it is therefore decreed that his application for a confirmation thereof be and the same is hereby denied.

Alpheus Selch }
R. Aug Thompson }
S. B. Haswell }

Commissioners

Filed in Office Sept 4, 1855.
Geo Fisher Secy

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 & decision in this case, and of the papers & evidence upon which the same are founded be made out & duly certified by the Secretary, one of which transcripts shall be filed with the clerk of United States District Court for the Southern Judicial District of California, and the other be transmitted to the Attorney General of the United States.



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

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
going One hundred + three — pages, numbered from
103, both inclusive, to contain a true, correct and full Tran-
script of the Record of the Proceedings and of the Decision of the
Board, of the Documentary Evidence and of the Testimony
of Witnesses, upon which the same is founded, on file in this
Case No. 712, on the Docket of the said Board,

Richard Gelston is
the Plaintiff against the United States, for the place known by
the name of "A lot of land two hundred by fifty
various



In Testimony Whereof, I hereunto set my hand
and affix my private Seal (not having a Seal
of Office) at San Francisco, California, this
Eleventh day of February
A. D. 1850, and of the Independence of the
United States of America the seventy-eighth

Geo. Fisher.
[Signature]

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U. S. DISTRICT COURT,

North District of California.

No. *357*

~~357~~

THE UNITED STATES.

ND

vs.

Roland Gelston

TRANSCRIPT OF THE RECORD

FROM THE

OF U. S. LAND COMMISSIONERS.

In Case No. *712*

Filed, *February 15* 1856
J. C. Monroe,
Clerk

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

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Roland Selston
vs
The United States } Case 712.

An appeal will be prosecuted on behalf
of the Plaintiff from the decision of the
Board of Commissioners to ascertain and
settle private Land Claims in the State
of California rendered on the 4 day of
September 1855 in the above entitled cause on
the docket of said Board.

A. P. Mard
Attorney for Claimant

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No 357

Case 712 on Docket of
Land Commission

In the District Court
of U.S. Northern District
of California

Roland Gelston
vs
The United States

Notice of Appeal

Filed Dec: 10. 1853,
J. Chivers,
Deputy.

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Office of the Board of Commissioners,

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

San Francisco, Feb'y 11th 1856

Sir;

I am directed by this Board to transmit you, pursuant to the requirements of the Act of Congress, approved August 31st, 1852, a 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, in Case No. 712 on the Docket of this Board, wherein

Roland Gelston is
the Claimant, for the place known by the name of a
200 by 50 vs. S. Francisco Co
Which Transcript I have the honor to accompany herewith, and request your receipt for the same.

I am, Respectfully,

Your Obedt Servant,

Geo. Fisher
Sg.

To Hon. J. A. Monroe Esq.

Attorney General of the United States,

Washington, D. C.

Clerk of the U. S. District Court
for the Northern Dist. of Cal.