

CASE No.

399

NORTHERN DISTRICT

LAS CALAVERAS GRANT

FRANCISCO PICO et al

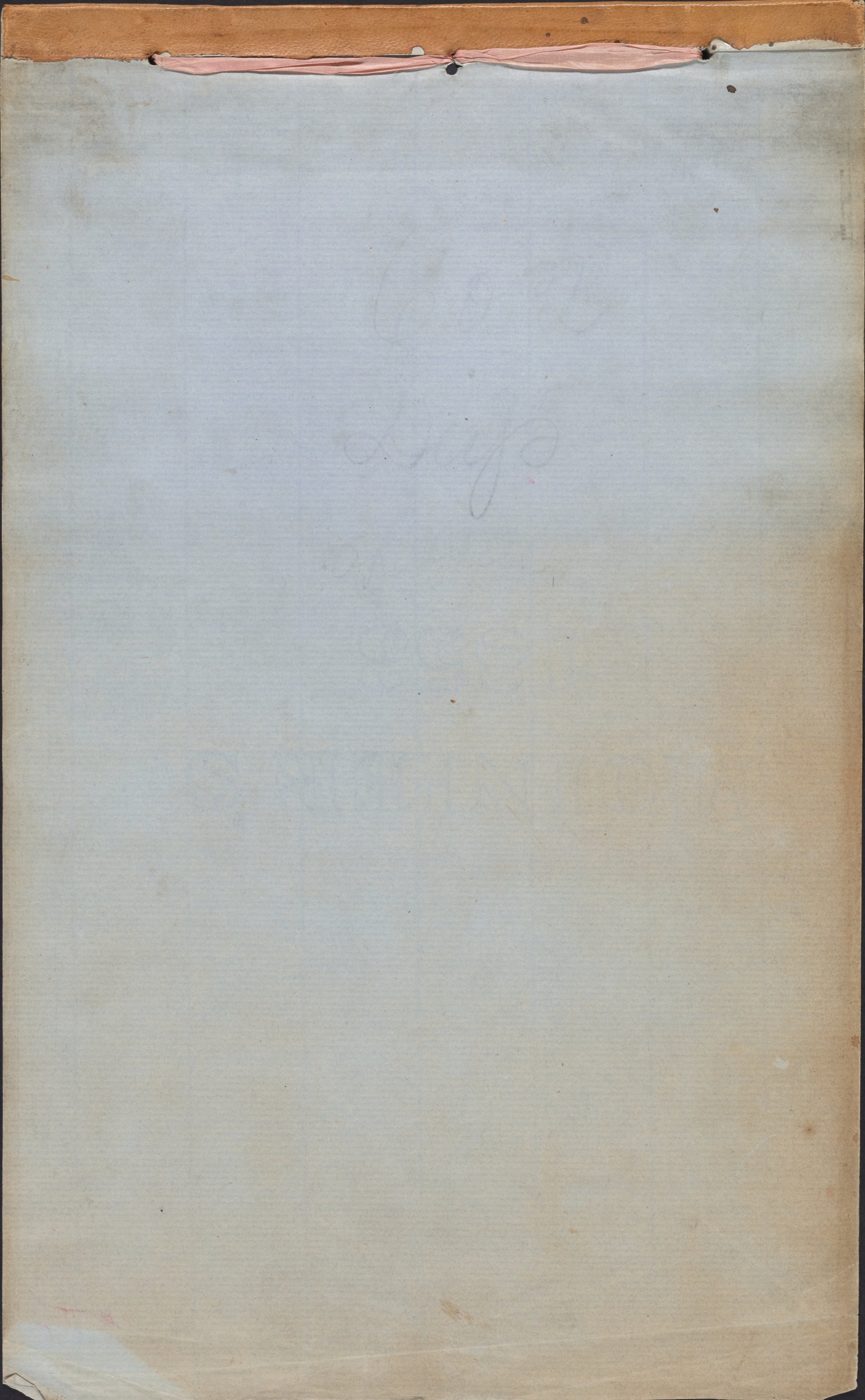
CLAIMANT

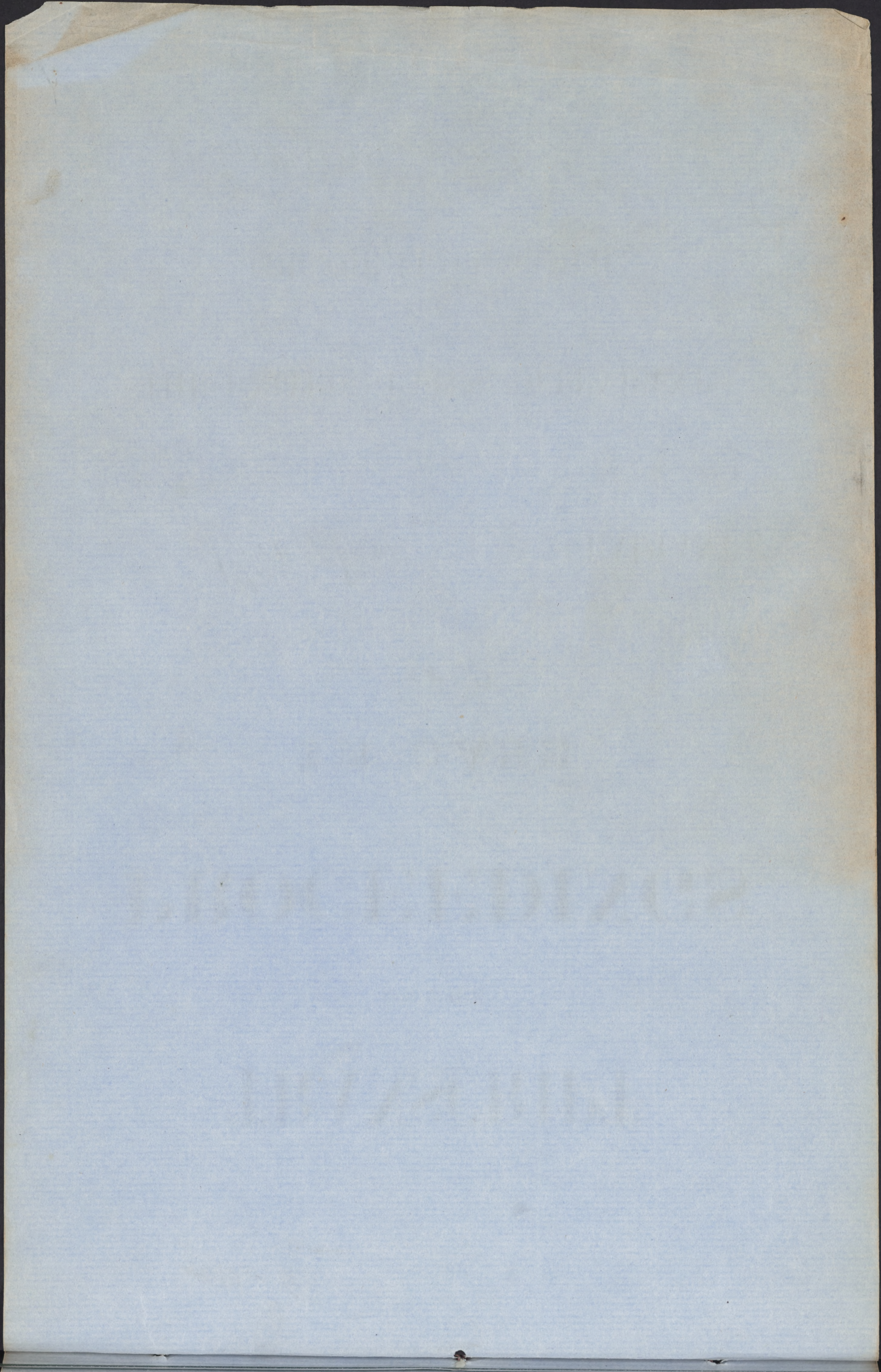
LAND CASE 399 ND

84 pgs.

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TRANSCRIPT
OF THE
PROCEEDINGS

IN CASE

NO. 602.

Francisco Pico, et al.

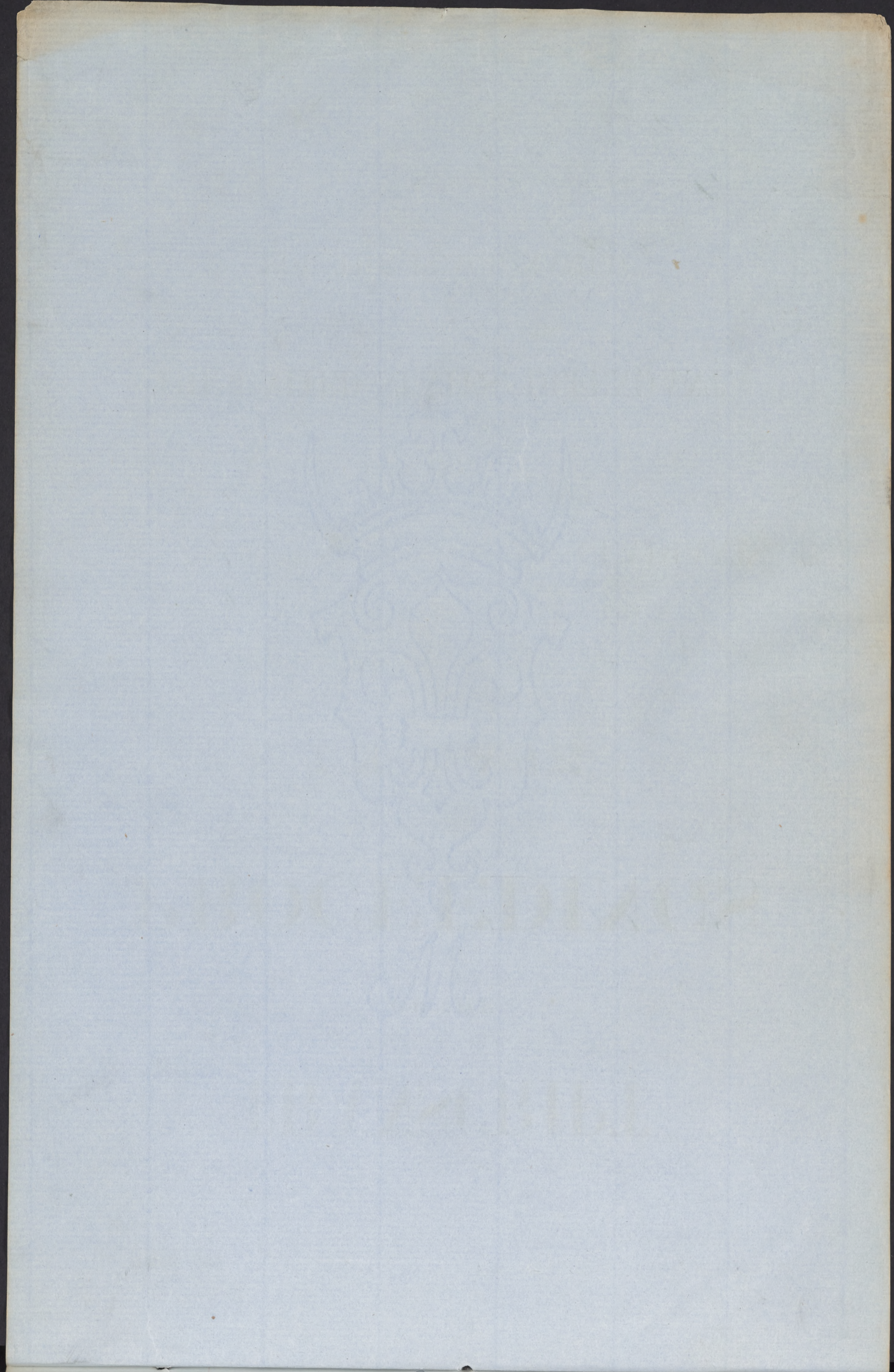
CLAIMANTS.

VS.

THE UNITED STATES, DEFENDANT,

FOR THE PLACE NAMED

San Calaveras.



Office of the Board of Commissioners,

To ascertain and settle the Private Land Claims

IN THE STATE OF CALIFORNIA.

399 ND
PAGE 2

Be it Remembered, that on this eighteenth day of February, 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 Francisco Pico, et al
for the Place named
"Las Calaveras,"
was presented, and ordered to be filed and docketed with No. 602 and is as follows, to wit:

(Vide page 3 of this Transcript.)

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

San Francisco February 19th 1853.
In case no. 602, Francisco Pico et al, for the place named "Las Calaveras," the deposition of Wm. A. Richardson, a witness in behalf of the claimants taken before Commissioner Melvin Hall, with document marked H. H. no. 1, annexed thereto, was filed,

(Vide page 5 of this Transcript.)

San Francisco March 26th 1853.
In the same case the deposition of Jose Nuega, a witness in behalf of the claimants, taken before Commissioner Melvin Hall, was filed,

(Vide page 6 of this Transcript.)

San Francisco April 15th 1853.
In the same case the deposition of Antonio Maria Pico, a witness in behalf of the claimants, taken before Commissioner Harry J. Fremont, was filed,

(Vide page 10 of this Transcript.)

2

San Francisco May 2 1854.

Case no. 602 was ordered to be placed at the foot of the 1st class cases on the trial docket.

San Francisco August 4 1854.

Case no. 602 was submitted on argument.

399 ND
PAGE 3

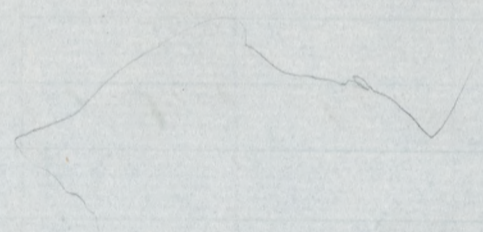
In the same case the deposition of Juan B. Alvarado, a witness in behalf of the United States, taken before the Commissioners sitting as a Board was filed;
(see page 8 of this Transcript)

San Francisco October 16 1855.

In the same case Commissioner Alpheus Felch delivered the opinion of the Board rejecting the claim;
(see page 25 of this Transcript)

N.

and the following order was made, to wit:
(see page 26 of this Transcript)



3
To The Honorable the Commissioners of the
United States for the ascertainment & settlement
of private land claims.

399 ND
PAGE 4

Your Petitioner Francisco Pico
Respectfully represents that the claims
to be the owner of the tract of land
known as "Las Calaveras" hereinafter
described.

That the said land was granted
to your Petitioner by Pio Pico Governor
of Alta California on the Eleventh day
of June A.D. 1846 your Petitioner having
solicited a grant for the same on the first
day of May A.D. 1846 and reports to said
Governor in regard to the situation of the
land and the character of your Petitioner
having been made to said Governor by John
S. Sutter of New Helvetia, by Francisco Guerrero
Alcalde of San Francisco and by Manuel
Castro Prefect of the First District pre-
viously to the issuance of said grant.

That said Petitioner, said reports and
the decree of concession of said Pico
with design or map of the land and on file
in the Archives of the State of California
in the possession of the Surveyor General
of the U.S. for said State, and that a fac-
simile or traced copy of the same duly
certified by said Surveyor General is here-
with submitted, and that said original
grant will be duly exhibited & proved.

That said land is situated in Tuolumne
County, and is bounded on the north by
the Calaveras Creek, on the north by the lands
granted to William Gulnac and Andres
Pico, on the west by the San Joaquin

Petition

4

399 ND

PAGE 5

River, on the East by a meridian line which with the other boundaries will include an area of Eleven square leagues. That your Petitioner took possession of said land immediately after obtaining said grant and has continued in possession thereof to the present time, and that he knows of no conflicting claim.

He therefore prays that his said claim and title to said land may be confirmed by your Honorable Board and in duty we &c.

Clark Taylor & Beckh.
Atty's for Petitioners

Filed in Office Feb 18. 1853

Geo. Fisher

Sec



San Feb 19th, 1853.

On this day before Court, Herland Hall came Wm A. Richardson a witness in behalf of the Claimant Francisco Pico, petition No 602 and was duly sworn, his evidence being given in English.

399 ND
PAGE 6

The U.S. Associate Law Agent was present.

Questions by Claimant

Deposition
of
Wm A Richardson

Quest 1. What is your name age and place of residence?

Answer. My name is Wm A. Richardson, my age 58 years. I reside on my Ranch of Sausalito, in Marin County.

Quest 2nd. Look on the Document now shown to you marked H. H. No 1, and attached to your Deposition purporting to be a grant from Pio Pico and countersigned by Jose Mathias Moreno Secretary to Francisco Pico, dated July 20, 1846. State what you know concerning said document and whether the signatures thereto are genuine.

Answer. I have looked at the Document shown me and have recognized the signatures of Pio Pico and Jose Mathias Moreno; I know they are their genuine signatures, having often seen these Gentlemen write.

In Answer to Questions by the Associate Law Agent the witness says he has never seen the said Document until today and knows nothing in regard to it except in regard to the hand writing of the signatures.

399 ND
PAGE 7

Wm. A. Richardson
sworn & subscribed

Before me

Heiland Hall Comr

Filed in Office Feb 19, 1853.
Geo. Fisher Sec

San Francisco March 26, 1853.
On this day before Comr. Heiland Hall came José, Noriega, a witness in behalf of the Claimant Francisco Pico petition No 002, and was duly sworn, his evidence being interpreted by the Secretary.

Deposition

José Noriega

The U.S. Associate Law Agent was present.

Questions by claimant.

Quest 1. What is your name age and place of residence?

Answer. My name is José Noriega, my age fifty three years and I reside in the Pueblo of San José.

Quest. State what you know concerning the land petitioned for upwards

of sixteen years?

In the month of April 1840 the petitioner applied to Capt Sutter to inform the Govern-ment of the land being unoccupied.

About the year 1840 the Indians in the neighborhood of the land petitioned for, became very hostile, stealing cattle and committing other depredations to such an extent as to render the possession and occupancy of the land impossible, and the attempt to take actual possession of the same dangerous: This state of things continued up to the time the Americans took pos-ession of California.

I have heard that the petitioner has during this year placed men upon the land who have cultivated it, built corral thereon and otherwise improved it, using it for the usual purposes of a Rancho.

The land is situated on the Calaveras River near Stockton.

Jose Toriega
Sworn & Subscribed

Before me

Heiland Hall

Com^r

Filed in Office March 26th 1853,
Geo. Fisher Sec.

8
United States of America
State of California,

San Francisco August 4th 1854.

Personally appeared this day before the Court to as-
certain and settle the private land claims in
the State of California sitting as a Board,
Juan B. Alvarado a witness in behalf of
the United States in Case No 602 on the Docket
of the said Board wherein Francisco Pico
is the Claimant against the United States
for the place named "Las Calaveras"
who upon being duly sworn deposed as
follows to wit:

Deposition
of
Juan B. Alvarado

Questions by the U.S. Law Agent.

Quest 1. Are you acquainted
with Francisco Pico the Claimant in this
case?

Ans. I am.

Quest 2. What is his relation-
ship to Pio Pico the former Governor of
California?

Ans. I believe he is a
cousin to him. They are the sons of two
Brothers.

Questions by the Counsel for the Claimant

Quest 1. What was the occu-
pation of Francisco Pico after the war
with the United States broke out in 1846?

Objected to by the U.S. Law Agent as not
being cross examination.

Ans. He was occupied in

9
the military service of the Country specially
as Carrier, Express rider, and such other
service which required the activity of
a man mounted on horseback.

Direct Examination by the U.S. Survey Agent.

399 ND
PAGE 10

Quest 1. Was Francisco
Pico a man of family at the time refer-
red to in the deposition?

Ans. I believe he was
not a married man, his family
consisted of his mother and Brothers
& Sisters as I understood, but cannot
say whether he was a married man.

Juan B. Alvarado

Subscribed & Sworn to before
the Commissioners sitting
as a Board this 4th day
of August A.D. 1854.

Attest Geo. Fisher

Filed in Office Aug 4, 1854
Geo. Fisher Sec.

San Francisco April 15th 1853.
On this day before Court Harry S. Thornton came Antonio M. Pico a witness on the Part of the Claimant Francisco Pico Petition No 602 and was duly sworn, his evidence being given in the Spanish & interpreted by the Secretary

399 ND
PAGE 11

Questions by Claimant

Deposition

of Antonio M. Pico

Quest 1st. What is your name, age, and place of residence?

Answer. My name is Antonio Maria Pico, my age forty three years, and my residence in San Jose California.

Quest. Are you acquainted with the hand writing of Pio Pico, and Jose Matias Moreno. If you look upon the Document now shown you filed with and marked Exhibit No 1 to the deposition of Wm A. Richardson in this case, and state if the signatures of those persons where they occur in and upon said document are their genuine signatures?

Ans. I am acquainted with the hand writing of the persons named, and have examined the document so marked, and state that their signatures in and upon the same are their genuine signatures.

Quest. 2. Are you acquainted with the land claimed in this case

called "Las Calaveras" if you state what you know of its present settlement, occupation or cultivation, when, by whom, and how?

399 ND
PAGE 12

Answer. I am acquainted with the Rancho. It was occupied by me for and as the Agent or tenant for the Grantee from the year 1847 to this time. It could not have been sooner occupied, or was not on account of the Civil Commotions in the Country.

I built a wooden house in which the people lived who were in service on the Rancho, who attended to the stock and cultivated enough for support.

W. S. Leary Agent Present.

Antonio M. Pico,
Sworn to & subscribed
Before me this 15th
of April 1853.

Harry D. Thornton,
Comr.

Filed in Office April 15th 1853.
G. Fisher Sec.

(Spanish loc ful)

12

13

13 A. S. M. campo que el correo que ... por medio de ... y ...

A. S. M. Certifico que el terreno que solicita el Sr. Francisco Pico esta baldio. Nueva Helbrina. Mayo 10 de 1846.

Sr. Jefe de Pov. y Comandante Militar Dn. Juan Agustín Suter.

J. A. Sutter.

Francisco Pico, Mejicano por nacimiento y vecino de Monterey, ante V. respetuosamente me presento y digo: que teniendo visto un rancho baldio en estos ranchos de este establecimiento que es de abana de las Calaberas a la boca de las

Espediente.

cuatro abas al sur y para la parte de el Rio de San Joaquin, Sierra Nevada segun esta por el camino que acompaña. Pido se dignen concederme el rancho de ocho sitios de ganado mayor para poder llevar los truntes con el Sr. Gobernador de este Departamento.

Por tanto suplico se sirva concederme lo que pido de lo que recibiré gracia.

Nueva Albeera. 10 de Mayo de 1846.

Aruego.

Francisco Pico.

38811.

There follows a map or plan.

San Joaquin. Mayo 12 de 1846.

En vista de la presente y declaracion del enorgado del Sr. del Sacramento, sobre el pedido de ocho sitios de ganado mayor y en virtud de no haber autoridad por el rumbo pedido por se practican como deban. Por lo que posean el Sr. Jefe del 2o distrito y que resulte lo que tenia a bien y le de el que mejor convenga.

Sr. Jefe del 2o Distrito Francisco Pico, Mejicano por nacimiento y vecino de Monterey ante V. Comandante respecto y como el dicho rancho y como mas halla lugar en derecho se presenta y dice: Que habiendo visto un terreno baldio en estos ranchos del establecimiento del Sacramento que es de el

Francisco Guerrero.

Arrollo de las Calaberas, a la boca de las cuatro

399 ND
PAGE 14

asi al Sur y para la parte del rio de San Joaquin y Sierra Nevada. Y como otro terreno se halla en el partido de su marido, solicito la insinuacion de V. acompansandole una representacion y dicens que se le hize al encargado de justicia de otro establecimiento del que obtuve una certificacion y para darle el giro que conviene, puto se digne V. concederle el informe que conviene para que pueda con toda inteligencia seguir los tramites correspondientes segun Estilo P. L. A. V. Suplico se sirva conceder lo pedido, de lo que se reciviere merced y gracia. Durnado lo secretario D.^a

Pueblo de S. Jese de Guadalupe. 8 de Mayo 1816.

Francisco Pico.

S. L. N.

Sirbase V. recibir la presente en papel comun por no haber el sellado que corresponde.

Enno. Sr. Gobernador.

Impuesta la Pref^a de mi cargo de la presente instancia en que el Ciudad^o Fran^{co} Pico padece el parage nombrado las Calaveras a la bolsa de los Cuatros, el informe de la Subjefatura y del Oren de Sierra Nevada, las cualidades del solicitante y lo demas que se manifiesta, es de parecer que se le conceda a la parte dicha la propiedad del mismo terreno de las Calaveras que solicita en esta forma de ocho sitios de ganado mayor. Si a V. E. asi lo pareciere conveniente.

Monterey Mayo 18 de 1816.

Manuel Castro.

S. L. N.

En vista de los informes que obran en este expediente en favor del interesado librese el titulo que asegure la propiedad sin perjuicio de lo que pertenece a lo que pertenece a los colindantes.

Angeles Junio 11 de 1816.

Pico.

Office of the Surveyor General of the United States
for California.

I Samuel D King, Surveyor General
of the United States for the State of California
and as such now having in my office and under
my custody a portion of the archives of the former
Spanish and Mexican Territory or Department of Upper
California do hereby certify that the five preceding
and hereunto attached pages of tracing paper num-
bered from one to five inclusive and each of which
is verified by my initials (S.D.K) exhibit true and
accurate copies of certain documents on file and forming
part of the said archives in this office.

In testimony whereof I have hereunto
signed my name officially and affixed my private
Seal (not having a seal of office) at the City of
San Francisco Cal. this 26th day of August 1852.

Samuel D King
Surveyor G. Cal.

Filed in Office. Feby. 18. 1853.

Geo. Fisher - Secy.

To The Justice of the Peace & Military Com-
mander Don Juan Augustin Sutter,

399 ND
PAGE 16

Translation
of
Expediente

I Francisco Pico, a Mexican by
birth and resident of Monterey, respect-
fully appear before your and say
That having seen a vacant location
in the direction of this Establishment
which is from the "Arroyo de las Cal-
averas" to La Baja de los Cueros "Towards
the South, and on the side of the River
of San Joaquin and Sierra Nevada,
as is shown in the Sketch I accompany
I request you to give me a report
for the grant of eight square leagues,
in order that the procedure can
be carried on by the Excellent Sir Govern-
or of this Department.

Therefore I ask you to accede to my
request, by which I shall receive
favor.

Y Nueva ^{Helvetia} ~~Germa~~ May 1846.

On request.

Francisco Pico.

(In the Margin)

I certify that the land
which Don Francisco Pico solicits
is vacant.

Nueva Helvetia May 1st 1846,
J. A. Sutter,

Sir Sub Prefect of the 2nd District
Francisco Pico, a Mexican
by birth & resident of Monterey, with
due respect, and as best may be consistent

with laws says before you.

That having seen a tract of vacant land in the direction of the Establishment of Sacramento which is from the Arroyo de las Calaveras, to "El Coloso de los Cueros, towards the South, and on the side of the River San Joaquin and Sierra Nevada and as said land is situate in the District under your Command.

I solicit your report, accompanying a representation and sketch which was made to the judicial Commission of said Establishment, from whom I obtained a certificate, and to give it the suitable circulation. I ask you to be pleased to give the report you may think proper so that the corresponding judicial procedure may be followed with a thorough understanding of the matter.

Therefore I pray you to be pleased to grant my request, whereby I shall receive favor, swearing to what is necessary.

Ex Pueblo de S. José Guadalupe 8th of May 1846.

Francisco Pico

Please to receive the present on former paper, the corresponding stamped paper not being had.

(In the Margin) Gerba Buena May 12th 1846. In view of the present and of the certificate of the Judicial Commission

399 ND
PAGE 18

of Sacramento about the solicitation of eight square leagues of land, and on account of not having authority in the locality asked for there has not been taken the necessary action; therefore it is referred to the Prefect of the 2nd District, that he may resolve what he shall deem proper and give it the more appropriate circulation.

Jo^{co} Guerrero

Excellent Sir Governor!

The Prefectura in my charge in view of the present instance where in the Citizen Jo^{co} Pico claims the location called "Las Calaveras" to "La Bolsa de las Cruces" the report of the Sub Prefectura and that of the Justice of Nueva Helvetia the qualifications of the Petitioners and every thing else set forth is of opinion that the said party maybe granted the ownership of the same land he solicits called Las Calaveras in extent 8 Sqr Leagues, if it so shall appear convenient to your Excellency.

Monterey May 18th 1846
Man^o Castro

In view of the reports contained in this Expediente in favor of the interested party let the title deed be issued to secure the ownership without prejudice to what may belong to the bordering land owners. See owners. Angeles June 11. 1846.
Pico

Filed in Office
Sept 19. 1853
Geo. Fisher

Pío Pico, Gobernador Constitucional del Depart.
de las Californias.

Por cuanto el ciudadano Fran.^{co}
Pico ha pretendido para su beneficio personal el
terreno conocido con el nombre del Arroyo de las
Calaveras a bolsa de los cuatro colindante por el N.
con el mismo arroyo de las Calaveras por el S. con el
terreno concedido a Don Guillermo Tubak y el de

H. H. 18^o 1. am^o
to the Depo. of W.^m
A. Richardson taken
before Com^r.
H. Hull.

Don Andres Pico por el E. con el llano y por el O. con
los terrenos practicados previamente las diligencias
y conmutaciones consiguientes, usando de las facultades
que me son con que me hallo autorizado por el Sup^{mo}
Gobierno a nombre de la Nacion Mexicana he venido
en conceder al expresado señor Pico el terreno
mencionado, obsecrando le la propiedad de él por
las presentes de conformidad con la ley de 18 de Mayo
de 1824 y reglamento de 21 de Noviembre de 1828
a reserva de la aprobacion de la Junta Asamble
Departamental y bajo las condiciones siguientes.

1.^o Podrá cercarlo sin perjudicar las transias
caminos y servidumbres, lo disfrutará libre y esclusiva
destinando lo al uso o cultivo que mas le convenga.

2.^o Solicitara del Jues respectivo le dé la posesion
Juridica en virtud de este despacho por el cual se
Renuncian los linderos con las propiedades respectivas.

3.^o El terreno de que se hace donacion es de ocho
sitios de ganado mayor. El Jues que otine la
posesion lo hará medir conforme a ordenanza
sin perjuicio de los terrenos concedidos a los señores
Tubak y Pico quedando el sobrante que resulta a
beneficio de la Nacion para los usos convenientes.

En consecuencia mandado que teniéndose
el presente titulo por firme y valido, se tome
razon de él en el libro que corresponde y se
entregue al interesado para su resguardo y demás
fines.

Dado en la Ciudad de los Angeles en este papel

papel comun por falta del sellado a veinte de
Julio de mil ochocientos cuarenta y seis.

Pío Pico.

José Matthias Moreno.

Frío. Luto.

Queda tomada razon de este superior despacho
en el libro respectivo.

Moreno.

399 ND
PAGE 20

Filed in Office. Feby. 19. 1853.

Geo. Fisher. Secy.

Pio Pico, Constitutional Governor of the Department of both Californias:

399 ND
PAGE 21

Translation of
Grant.

Whereas the Citizens Francisco Pico has solicited for his personal benefit the land known by the name of Arroyo de las Calaveras or Bolsa de las Cuatras bordering to the North, on the same Arroyo de las Calaveras to the South on the land granted to Don Guillermo Galvaac, and that of Don Andres Pico, to the East on the plain and to the West on las Estuas, after having previously made the necessary investigation and taken the necessary action in exercise of the powers I am authorized by the Supreme Government in the name of the Mexican Government, I have concluded to grant the said Pico the mentioned land declaring it his property by these presents in conformity with the law of the 18th of August 1828 and regulations of 21st of November 1828 under reservation of the approbation of the Excellent Departmental Assembly and under the following conditions:

1st He may fence it without prejudice to the crossings roads and servitudes, he will enjoy it freely and exclusively, appropriating it to the use or culture that best may suit him.

2nd He will solicit of the respective

24

Judge to give him judicial possession in virtue of this Document. By whom the boundaries are to be marked with the respective landmarks

399 ND
PAGE 22

3^d The land granted is eight square leagues (sitios de ganado mayor)

The Judge who shall give the possession will cause it to be measured conformable to ordinance, without prejudice to the lands granted to Culiac and Pico, leaving the surplus that may result to the benefit of the nation for convenient purposes.

Consequently I order that the present title deed being held firm and valid it be entered in the corresponding book and delivered to the interested party for his security and other purposes.

Given in the City of San Angeles on this common paper for want of stamped paper on the 11th of July 1846,

Pio Pico
(Alonso)

Filed in Office Sept 19, 1853
Geo. Fisher Sec.

Opinion of Board by Comr. Felch

Francisco Pico vs The United States

For the place called "Las Calaveras" in Coluene County containing Eight Square Leagues of Land.

399 ND PAGE 23

This claim is based on a grant to the Claimant signed by Pio Pico and given in evidence. The document bears date July 30. 1846, which was subsequent to the conquest of the country by the Americans -

It is held in John Melson's Case (No 50) that the power of the Governor of California to make grants under the Mexican Law ceased on the raising of the American Flag at Monterey July 7 - 1846 -

Under this ruling the grant presented was without authority, and this claim based upon it cannot therefore be entitled to a Confirmation. Decree adverse to petitioner

Felic in office Oct. 16 - 1855

Geo Fisher

Secy

Decree
 Francisco Pico
 vs
 The United States

In this case on hearing the proofs and allegations it is accepted by the Commission that the claim of the said petitioner is ^{not} valid and it is therefore decreed that his application for a confirmation thereof be denied

399 ND
 PAGE 24



Alpheus Selch
 R. Aug. Thompson
 S. B. Furwell

Commissioners

Filed in office Oct. 16. 1855
 Geo. Fisher Secy

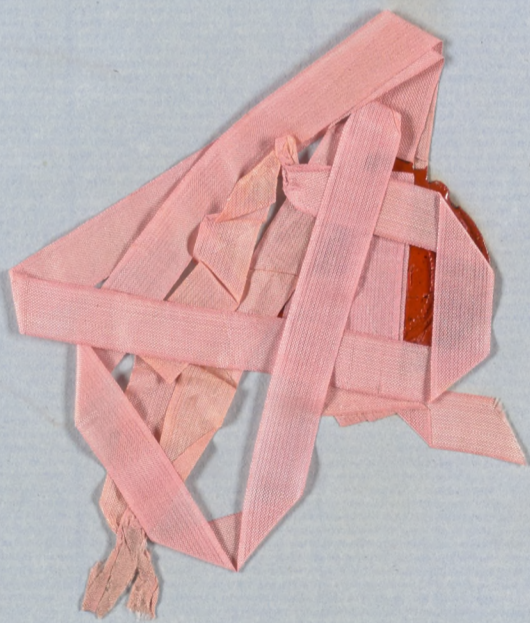
And it appearing to the satisfaction of the Board that the same hereby adjudged is situated in the Northern District of California, It is hereby ordered that two transcripts of the proceedings and decision in this case and of the papers and evidence upon which the same are founded be made out and duly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

Office of the Board of Commissioners,

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

I, *George Fisher* Secretary to
the Board of Commissioners to ascertain and settle the Private
Land Claims in the State of California, do hereby certify the
foregoing *Twenty six* pages, numbered from
1 to *26*, both inclusive, to contain a true, correct and full Tran-
script of the Record of the Proceedings and of the Decision of the
said Board, of the Documentary Evidence and of the Testimony
of the Witnesses, upon which the same is founded, on file in this
Office, in Case No. *612* on the Docket of the said Board,
wherein

Francisco Pico, et al, are
the Claimant, against the United States, for the place known by
the name of "*Las Calaveras*"



In Testimony Whereof, I hereunto set my hand
and affix my private Seal (not having a Seal
of Office) at San Francisco, California, this
Twenty sixth day of *January*
A. D. *1856*, and of the Independence of the
United States of America the *seventy-eighth*.

Geo. Fisher
Secy

399

U. S. DISTRICT COURT, *MD*
North District of California.

No. 399-399

THE UNITED STATES,

vs.

Francisco Rico, et al.

TRANSCRIPT OF THE RECORD

FROM THE
BOARD OF U. S. LAND COMMISSIONERS.

In Case No. *682.*

Filed, *January 30* 1856,

J. A. Monroe,
Clk

No. 399.

Francisco Pico & al } Appeal. Land
vs } Leases No. 602
United States. } "Las Calaveras"

399 ND
PAGE 26

To the Clerk of the United States
Court for the Northern District of
California.

I deem it my duty to give notice
that Francisco Pico hereby appeals
to the said court from the decision of
the Board of Commissioners appointed
to ascertain and settle the private land
claims in the State of California by the
Act of Congress of the 3d March 1851, by which
his claim to the tract called "Las Calaveras",
and entered upon the Docket of the said
Board as No. 602, was rejected by them
Francisco Pico

San Francisco.
21 July 1856.

by
Gentry King
his atty

No 399. one
In the U.S. Court for
the Northern District
of California

Francisco Pico et al
vs
The United States
"La Calaveras"

Notice of appeal

Filed July 21, 1856
by Cheever,
Deputy.

399 ND
PAGE 27

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

399 ND
PAGE 28

Francisco Pico
Appellant
vs
The United States
Appellee
No 399

~~Wherefore~~ The petition of the
Francisco Pico, by his attorney represents
that this cause is an application for
a review of the decision of the Board of Land
Commissioners, whereby the claim of said
Appellee was rejected as appears by
reference to the records in the case; that
a transcript of the said records was filed
in this Court on the _____ day of _____
and that the land claimed lies in the
Northern District, in the county of Calaveras.
That said claim is valid.

Wherefore Appellee prays that the said
decision of the Board be reversed and that
this Court decree the said title to be valid.

Respectfully
J. Clarke Atty.
for Claimant

^{three}
M. S. District Court

No 399

Franciscoisco

vs

The United States

Patron

Filed April 1, 1856,

Cherico,

Deputy.

399 ND

PAGE 29

District Court of the United States
Northern District of California

399 ND
PAGE 30

Francisco Pico et al. } No 399
vs } Com. Docket
The United States } No 602

Notice is hereby given that the
appeal in the above entitled case from
the decision of the United States
Board of Land Commissioners to
the District Court of the United
States, will be prosecuted by the
Claimants therein, in the said
Court,

April 1st 1856 J. Clarke
Atty for Claimant

770
U. S. District Court
Northern District
of California

No 399

Francisco Dec 1856

17

The United States

Notice of Appeal

Filed April 1. 1856,
Chenier,
Deputy.

399 ND
PAGE 31

J. Clarke aty
for Plaintiff

No 399.

In the United States Court for the
Northern District of California

399 ND
PAGE 32

Francisco Pico et al
vs appellants
The United States
Appellees.

The respondents for answer to the
petition filed in this case, answer and say
It is true that the lands mentioned
in said petition and in said transcript
of the proceedings before the said Board
of Land Commissioners, lie within the said
Northern District of California and
within the jurisdiction of this Court.
But these respondents deny that the
alleged title to the said land is valid, and
aver that the same is invalid, and pray
that the decision of the said Board be
affirmed, and that the title of the petition
be decreed to be invalid.

A. Russell

Atty. Gen. Attorney

No 399. five
In the District Court of
the United States for the
Southern Dist of California

Francisco Rico et al
vs

The United States

"San Calaveras"

Answer

Filed April 28th 1838
Cheever,
Deputy.

399 ND
PAGE 33

A. Russell

Francisco Pico et al

vs

The United States.

} Appeal.

To the Hon^{ble} Augustus Hoffmann Jr. Judge
of the United States' District Court for the
Northern District of California.

The petition of Francisco Pico, a citizen
of the United States respectfully represents,

That under the provisions of the Act of
Congress of the 3^d March 1851. he presented a
petition to the Commissioners appointed under
said act to examine claims to land in
California, praying for the confirmation
of his claim to the tract of land therein
described called "Las Calaveras"
situate in the present County of
under a decree of Concepcion made in
his favor by Governor Pio Pico on the 11th
June 1846, (and for which a title in form was
issued by said Governor on the 20 July 1846)
and accompanied it by evidence of his
title; and, to which, for more full and
particular description he begs leave to
refer.

That his said claim being designated
as No 602 in the Docket of the said Comrs
was reported by them on the 16th October 1855
that the said land is situate within the

limits of the Northern District of California -
that a transcript of the proceedings and
decision of the Commissioners in the case,
was filed in the office of the Clerk of
the Court for that district on the 30th
July 1856: And on the 21st Feb^y 1856, notice was
filed with said Clerk that your petition
appealed from such decision.

Your petitioners pray for a rehearing
of the case upon this appeal - that the
said decision of the Commissioners may
be reversed and annulled, and that the
Court will make such decrees & orders,
as may be necessary and proper to recognize
your claim and declare valid his title and
claim to the premises mentioned referred
to in his said petition and evidence of
claim.

And your petitioners will ever pray be
Francisco Pico

by
Hault & King
Attorneys

No 399. four.
In the U.S. Court for
the Northern District
of California

Francisco Rico del
vs
The United States
"Las Calaveras"

Appeal Petition.

Filed April 28th 1856
Clerk.
Deputy.

399 ND
PAGE 36

399 ND
PAGE 37

At a *Stated* Term of the District Court of the
UNITED STATES OF AMERICA, for the Northern District of Cali-
fornia, held at the *Court Room* in the City of SAN
FRANCISCO, on *Monday* the *26th* day of
October in the year of our Lord one thousand
eight hundred and fifty-*seven*

Present:

The Honorable OGDEN HOFFMAN, *District Judge.*

Francisco Pico et al
vs
The United States

No 399

This Cause having been once submitted and it appearing to the Court that there is an error in the transcript from the Board of Land Commissioners, and an omission on the part of Claimants to prove the handwriting of the Mexican authorities who made the grant, it is on motion of Claimants Counsel, ordered that the Case be re-opened to correct said error and to take additional testimony

399. *104*

United States District Court, Northern
District of California.

Francisco Pico et al

vs.

The United States

*Order to open cause
and correct transcript*

Filed *Oct 26th* 1857

John A. Monroe CLERK.

Benjamin F. Johnson DEPUTY.

399 ND
PAGE 38

Francisco Pico

The United States

In the District Court of
the United States for the
Northern Div. of Cal:
Las Calaveras. —

It appearing to the

Court, that the transcript in this case is
imperfect, it is ordered on motion of the
Attorney for the Claimant, that this case
be re-opened, to correct said transcript &
take additional testimony. ~~_____~~

399

U. S. Dist Court

Francisco Pico

vs

The United States

Order to open case

Filed October 26th 1837

J. W. G. Higgins
Deputy

399 ND
PAGE 40

UNITED STATES DISTRICT COURT,
Northern District of California.

Francisco Pico et al

vs

The United States

San Francisco,

November 18th 57

ON this day, before *J. Edgar Payne* a
Special *Magistrate* Commissioner of the United States for the Northern District of California, duly
authorized to administer oaths, &c., &c., came *Juan B. Alvarado*

a witness produced on behalf of the

Claimants

in Case No. 399, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 602 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows — his evidence being interpreted by

a sworn interpreter

PRESENT: *U.S. Dist Atty and Stanley King*
for Claimants

QUESTIONS BY *Claimant's Counsel*

1st Ques. What is your name age and place of residence?

1st Ans. My name is Juan B. Alvarado, 48 years old and reside at San Francisco for the present *Imm*

2nd Ques. — Please look at the ~~original~~ paper produced from the Surveyor General's office purporting to be the original expediente in this Case and of which ~~is~~ a copy is to be found in the Transcript. And if so please say if the handwriting of John A. Sutter, Francisco Guerrero Manuel Castro & Gov. Pico are things genuine signatures

2nd Ans. — They are all their genuine signatures.

3rd Ques. — Cross Examination

3rd Ques. Is the signature dated Mexico June 11th 1846 at the end of the Expediente the usual signature of Pico Pico?

3rd Ans. I think that it is his usual signature - That is the way that he commonly signed his name as the Gov. Was Governor Pico in the habit of signing his name when Governor single Pico or did he not sign Pico Pico?

4th Ans. He was in the habit of signing both ways. We call when signed with one name as Pico alone "media firma"

5th Ques. Look at the letter P in the word Pico and state if he usually wrote it like it is there?

5th Ans. The top part of the P looks a little longer, but I judge that the name was written in a hurry and that is the way it happened. I am well acquainted with the handwriting of Pico Pico. I have seen him write several times.

It is admitted that the original document here produced from the Survey or General's office is a copy on pages 13 & 14 in the transcripts filed in this case - together with the map

Juan Gutierrez

Sworn to & subscribed before me this 9th day of November A.D. 1857

J. Edgar Hayes

Special Commissioner

No. 399 eight

U. S. Dist Court

The United States

vs

Francisco Pico Coal

Seizure of Juan B
Alvarado

Filed Nov. 9 1837

J. W. G. G. G.
Deputy

399 ND

PAGE 43

From 44 To 52 Inclusive.

No. 1

Señor Pico Gobernador Constitucional del Departamento de las Californias

399 ND
PAGE 44



Por cuanto el Ciudadano Francisco Pico ha pretendido para su beneficio personal el terreno concedido con el nombre del arroyo de las Calaveras i bolsa de los cuatro colindantes por el N. con el mismo arroyo de las Calaveras, por el S. con el terreno concedido á Don Guillermo Gutierrez y el de Don Andres Pico por el E. con el llano y por el O. con los esteros practicadas previamente las averiguaciones y diligencias consiguientes, usando de las facultades con que me hallo autorizado por el Supremo Gobierno á nombre de la Nacion Mexicana he venido en conceder al expresado Señor Pico el terreno mencionado declarandole la propiedad de él por las presentes de conformidad con la ley de 18 de Agosto

de 1824 y reglamento de 21 de Noviembre de 1828, á reserva de la aprobacion de la Exma. Asamblea Departamental y bajo las condiciones siguientes

- 1.^a Podrá cercarlo sin perjudicar las travesías caminos y servidumbres; lo disfrutará libre y exclusivamente destinándolo al uso ó cultivos que mas le convenga
- 2.^a Solicitará del juez respectivo le dé la posesion jurídica en virtud de este despacho por el cual se demarcaran los linderos con las respectivas mojonearas
- 3.^a El terreno de que se hace donacion es de ocho Sitios de ganado mayor. El juez que diere la posesion los hará medir conforme á ordenanza sin perjuicio de los terrenos convecindas á los señores Gulnab y Pico quedando el Sobrante que resulta á beneficio de la Nacion para los usos convenientes.

En consecuencia manda que teniendo el presente título por firme y valedero, se tome razon de él

en el libro que corresponde y se
entregue al interesado para su
resguardo y demás fines.

Dado en la Ciudad de
Los Angeles en este papel común
por falta del sellado á veinte
de Julio de mil ochocientos
cuarenta y seis.

Pío Pico

José Placido Moreno

Arto. Ynd.

Queda tomada razon de este
Superior Despacho en el libro res-
pectivo. Moreno

N^o 602

Francisco Pico

Las Calaveras

H. H. N^o 1 - am^o to the
Depo of - W^m A Richardson
taken before Com^r
William Hall

Filed in Office Feby 19.
1853.

Geo. Fisher

[Signature]

Recorded in Rec of said
vol. 18 p. 519.

399 ND
PAGE 47

Translation

Pio Pico Constitutional Governor of the Department of ~~the~~ ^{the} Californias.

(L.S.)

399 ND
PAGE 48

Whereas the Citizen Francisco Pico has solicited for his personal benefit the land known by the name of Arroyo de las Calaveras or the Colca de las Cuatro bordering on the North on the same Arroyo de las Calaveras, to the South on the land granted to Don Guillerme Gulnac and that of Don Andres Pico, to the East on the plain, and to the West on Las Esteros, after having previously made the necessary investigation and taken the necessary action, in exercise of the powers I am authorized by the Supreme Government, in the name of the Mexican nation, I have concluded to grant the said Pico the mentioned land, declaring it his property, by these presents, in conformity with the law of the 18th of August 1824 and regulations of 21st of November 1828, under reservation of the approbation of the Excellent Departmental assembly and under the following conditions

1st He may fence it without prejudice to the crossings, roads and servitudes, he will enjoy it freely and exclusively, appropriating it to the use or culture that may

best suit him.

2nd He will solicit of the respective Judge to give him juridical possession in virtue of this Document, by whom the boundaries are to be marked with the respective land marks

3^d The land granted is eight square leagues (sitios de ganada Mayor) The Judge who shall give the possession will cause it to be measured conformable to ordinance, without prejudice to the lands granted to Gulnac and Pico, leaving the surplus that may result to the benefit of the nation for convenient purposes.

Consequently I order that the present title deed being held firm and valid it be entered in the corresponding book and delivered to the interested party for his security and other purposes.

Given in the City of Los Angeles on this common paper for want of stamped paper on the twentieth of July 1846.

Pis Pico
(Plourish)

José Matthias Morena
(Plourish)

Secy. Int.

This Superior title remains entered in
the respective book Moorena
(Slavish)

399 ND
PAGE 50

J. S. Edgar Grymes, hereby certify that
the above is a correct translation to the
best of my ability, knowledge and belief
J. Edgar Grymes

It is stipulated that the foregoing
shall be admitted on the part of this case
as a correct translation of the original document
a true copy of which is hereto attached -

Truly & King for Plaintiff

P. Della Fove
W. S. atty.

Office of the Surveyor General,
Of the United States, for California.

I, JOHN C. HAYS, Surveyor General of the United States for the State of California, and as such, having on file in my office, and in my charge and custody the Records and papers, of the late Board of United States Commissioners to ascertain and settle the private land claims in California, by virtue of the power vested in me by law, Do hereby Certify, that the ~~four~~ preceding, and hereunto annexed pages of tracing paper, numbered from one to _____ inclusive, exhibit a true and accurate copy of a certain document filed in case No. 602 on the docket of said Board, (with the same accounts thereon) and now on file in this office

In Testimony Whereof, I have hereunto signed my name officially, and caused my Seal of Office to be affixed, at the City of San Francisco, this thirteenth day of August 1857



John C. Hays

U. S. Surveyor General for California.

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

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

n^o 602
Francisco Pico

La Calaveras
Certif^d Copy of the
Title in form -
20 July 1846.

Robert
H Pico
Title in form
Copy -

No. 399 same

U. S. District Court

Francisco Pico et al
vs
The United States

Expediente Translation
and Stipulation

Filed November 9th 1857
W. G. G. G. G. G.
deputy

399 ND
PAGE 52

At a Stated Term of the District Court of the UNITED STATES OF AMERICA, for the Northern District of California, held at the Court Room, in the City of SAN FRANCISCO, on *Thursday* the *Seventeenth* day of *December* in the year of our Lord one thousand

eight hundred and fifty-seven.

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States

vs

Iran: Peis et al

No. 399.

On application of P. Della Torre Esq, U. S. Attorney, it is ordered that the Marshal of the United States for this District pay David J. Douglas the sum of one dollar and fifty cents for one days attendance as a witness in the above case on the part of the U. S., and the further sum of Twelve dollars and fifty cents for his mileage - 250 miles at 50c. —

Ogden Hoffman
U. S. District Judge

12.50
1.50
14.00

Northern Dist of Cal. p: David J. Douglas
being duly sworn says - that in obedience
to a writ of subpoena he attended as a wit-
-ness in the ~~above~~ within case on the part of
the United States, and that he is justly and
lawfully entitled to the sum of Fourteen
dollars for his mileage and attendance &
that he has received no part thereof.

Sworn before me
this 17 Dec 1857

David J. Douglas

J. Maguire
Deputy Clerk

399 ten

United States District Court, Northern District of
California.

The United States

vs.

J. P. Douglas

ORDER.

David J. Douglas

1857

Filed Dec 17th

John A. Mearns

CLERK.

399 ND

PAGE 54

By

DEPUTY.

In the District Court - of the
United States: for the Northern
District of California -

NO: 399

The United States
Francisco Pico } Las Calaveras -

David F. Douglas, being duly
sworn deposes & says, I came to California in
November 1848, & settled on the Rancho Calaveras
in July 1849 where I have made my home ever since.

I am acquainted with the Rancho Las
Calaveras; Antonio Maria Pico, showed me the
papers, purporting to be the title papers of this
Rancho, in June or July 1853, at a settlement meeting
in San Joaquin County. I saw no improvements
on the Rancho, & am pretty well acquainted with
the whole of it: I have hunted cattle all over
it. I never heard of the grant until the
year 1853. I know of no improvements

made by any of the claimants of this Rancho
upon it since I first knew it. When I say
above I saw no improvements on the Rancho, I mean
when I first knew it: I saw no marks of
former inhabitation on the Rancho & never heard
of any. There were no cattle on it,
except Mr Webber's or Mr Ritchie's
when I knew it, & some of my own.

and further Deposition - said to not -

David F. Douglass

Shewn to before me
L. A. Mowbray
M. S. Cummings

It is hereby stipulated that this affidavit
be admitted as evidence as fully as if the
Deposition of the witness had been taken regularly
in all respects -

Calhoun Benjamin
vs
Sturley & King
Plaintiffs
vs
Defendants

399
Mr. J. S. Court
No. 100 of Cal

San Francisco
Applicant
and
of the United States
a Pleas

Applicant of
David F. Douglass

Filed Dec 17th 57
L. A. Mowbray
C. M.

In the District Court of the
United States for the Northern
District of California -

No: 399 - Francisco Pico et al,

The United States. *JP*

It is hereby stipulated that
the affidavit of any witness, of unexceptionable
character, proving the handwriting of John
A. Sutter to the Expediente in this
case, shall be admitted on the hearing
of this case, as fully as if the Deposition
of the witness had been regularly taken
with liberty to the United States, to
take any evidence relating to said
affidavit of deemed necessary by the
District Attorney. -

Approved -

P. D. J.

N. S. M.

Stanley & King for Plaintiff
Callison Bonham
on Part of U. S.

In the District Court
of the U. S. for the
Northern Div. of Cal

Francisco Piccochab

^{vs}
The United States

Stipulation —

399 ND
PAGE 58

In the District Court of the United States for the Northern District of California

399 ND
PAGE 59

Francisco Pico et al: No: 602 L. C.
The United States. vs No: 399 U. S. Dist. Co:

Thomas O. Larkin,
being duly sworn says he has examined the Expediente in this case, on file in the office of the Surveyor General of the United States, and the entry in said Expediente purporting to be in the hand-writing of John A. Sutter, certifying the land petitioned for was vacant: that he is acquainted with the hand-writing of said Sutter and believes the entry above referred to is in his own proper handwriting - the entry referred to is in these words = "Certifico que el terreno que solicita el Sr. Dn Francisco Pico esta baldio. Nueva Helvecia Mayo 1 de 1846 J. A. Sutter"

Subscribed and sworn
to before me this 22nd day of December A.D. 1857.

Thomas O. Larkin

A. J. Shubault
Notary Public

This affidavit of Thos. O. Larkin is admitted to be
read in the hearing of this case, according to the annexed
Stipulation. -
Approved
Calhoun Dickinson
for United States

P.D.F.

No. 1. 1857

In the District Court of
the United States for the
Northern District of Cal.

No: 399 -

Francisco Pico et al

,

The United States

Stipulation & Affidavit
of Thos. O. Larkin

Filed Dec 23 1857

Raymond
copy

In the District Court of the United States for the
Northern District of California

Francisco Pico

No. Appellant

The United States

Appellee

Doctet N^o 399, Term N^o 102

"Las Calaveras"

Decree of Confirmation

At a Stated Term, held January 9, 1858,

This cause coming on this day to be heard upon
the transcript of the proceedings and the decision of the
Board of Land Commissioners of the United States to
ascertain and settle the private land claims in the
State of California and the papers and evidence in the
case, and the pleadings filed in this Court, and counsel
having been heard on the part of the United States and
for the claimant

In consideration of all which the learned Opinion
that there is error in the decision of the said Board,
and that the same should be, and is hereby reversed

And this Court doth order adjudge and decree
that the title of the said claimant to the land
described in the said transcript is valid, and
the same is hereby confirmed.

The land of which confirmation is hereby
made is of the extent of Eight square leagues
and no more, and is known by the name of
"Arroyo de las Calaveras", bordering on the
North on the said Arroyo de las Calaveras.

to the South on the lands granted to Don Guillermo
Gulnac and that of Don Andrés Pico - to the
East on the plain and to the West on
Los Esteros, as represented on the map or
deseño forming a part of the Expediente
and of which a copy is filed with the
Papers of the case, and to which reference
is to be had for a more particular identification
of the tract hereby confirmed, provided,
that the said quantity of Eight square
leagues should be contained within the
limits and boundaries so described, but
if they should embrace a less area then
that less area is hereby confirmed and
no more.

J. W. Hoffman
A. S. Secy prope

United States District Court
for the
Northern District of California

Court No 399
Tramscript 402

Francisco Pico
vs
The United States

"Las Calaveras."

Decree of
Confirmation.

Filed January 9, 1858.

W. D. Chivers,
Dep. Clk.

399 ND
PAGE 63

Leonard

The United States
ads
Francisco Pico real

399 ND
PAGE 64

The expediente produced from
the archives in this case con-
tains the following documents -

1. a petition by the claimant
to the Justice of the Peace &
Military Commander Don Juan
A. Satta requesting a favorable
report for the grant of the
land mentioned in the petition
and delineated on the map
which accompanied it -

This petition is dated May 1. 1846

In the margin of this petition
is an certificate by Satta dated
on the same day, that the land
solicited is vacant

2^d a petition by the claimant
to the Sub Prefect of the 2^d dis-
trict soliciting his favorable
report, to accompany the repre-
sentation & desesio previously pre-
sented to the judicial officer
of said Establishment from
whom the petition had already
obtained a certificate - so that

Further proceedings may be taken with a thorough understanding of the matter—

This Petition is dated May 8th 1846

399 ND
PAGE 65

In the margin is a note by Francisco Guerrero dated May 12th 1846 in which he declines to act in the matter not having the necessary authority and he refers the matter to the Prefect of the 2^d District "to resolve what he shall deem proper"—

- 3 A report of the Prefect Manuel Castro dated May 18th 1846 in which he states that in view of the petition, the report of the Sub-Prefect and that of the Judge of Queva Helveta the qualifications of the Petitioner and every thing else he is of opinion that the said party may be granted the ownership of said land "if it shall appear convenient to you by all means"

3^d An order of the Governor
as follows -

" In view of the reports con-
" tained in this Expediente in
" favor of the interested party
" let the title issue to secure
" the ownership without preju-
" dice to what may belong to
" the bordering land owners
Angeles June 11.th 1846
"Rio"

399 ND
PAGE 66

The claimant has also
produced the final title date
issued in pursuance of the
above order. It is dated
however on the 20th July 1846
about 13 days after the cap-
ture of Monterey.

The claim was rejected by
the Board on the ground
that the final title issued
after the occupation of the
County by the American forces.

It must be admitted that after
California was subjected to the
American arms no Mexican au-
thority could do any act which

would affect the rights of
 the U. S. to the public
 property— U. S. v. Fremont. 17 How. 563

"The civil and Municipal offi-
 cers who continued to exercise
 their functions did so under
 the authority of the American
 Government" it —

399 ND
 PAGE 67

It is not however easy to deter-
 mine the precise period at
 which the ~~the~~ Mexican authority
 ceased de facto to exist, and
 at which California ^{must} be
 deemed to have been subjected
 to our arms —

The Political Branch of our Gov-
 ernment seem to have indicated
 the 7th July 1846, ^{the date of the capture of Monterey} as the date ^{at} which
 at which the conquest is deemed
 to have been effected. Act of 1851
 § 14) — It is to be considered
 however that Los Angeles ~~was~~
 not finally the capital of the
 country was not taken until
 some months later, ~~and~~ the
 Governor continued in the exercise
 of his functions until August
 and regular sessions of the
 Departmental Assembly seem to

have been held for some time afterwards -

But assuming the earlier date as the period when the powers of the Mexican functionaries ceased the question arises whether the circumstance that the final document issued 13 days after taking of Monterey is sufficient to a fatal objection to the claim

From the expediente already referred to we find that as early as the month of May all the proceedings were had preliminary to the issuance of the final document - a petition was presented with favorable reports and accompanied by a *decreto* and the Governor on the 11th June accedes in effect to the petition and orders the final title to be issued to secure the ownership -

So far as the Governor's discretion
was concerned he had fully
~~acted~~ exercised it - and had
determined to grant the land -
If the disturbed condition state
of public affairs or the neglect
of the Secretary, ~~have~~ prevented
the performance of the merely minis-
terial act of drawing out the title
in form and presenting it for
signature of the Governor it seems
to ~~me~~^{us} that such an omission
ought not to invalidate the
vested or incipient title which
the petitioner had acquired by
the previous proceedings -
In the case of Rafael Sanchez
vs The U. S. the which was nearly
entirely depended on the same
question as that raised in this
case the Judge of the Southern
District of this state, decreed
in favor of the claimant - that
decision has been reversed in
by the U. S. and the appeal
to the Supreme Court dismissed
In the reasoning and conclusions
of the Court in that case we
entirely concur - and are of opinion

7

399 ND
PAGE 70

that the petition the favorable reports, and the order of the Governor directing the title to issue, followed by the actual issuance of the title, at a period when the Governor could hardly have ^{anticipated the consequences} ~~known~~ of the capture of Monterey, and certainly before he could have been fully satisfied that the sovereignty had ^{finally} passed away from Mexico, constitute an equitable title which the U. S. must respect.

a decree of confirmation must be returned.

399.
U. S. 399.

W
Francisco Pico

Simone

May 9. 1808

6

399 ND
PAGE 71

At a Stated Term of the District Court of the
UNITED STATES OF AMERICA, for the Northern District of
California, held at the Court Room, in the City of SAN FRANCISCO,
on *Tuesday* the *Second* day of
February in the year of our Lord one thousand

eight hundred and fifty ~~seven~~ *eight*,

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States

vs

Francisco Rico, et al

No. 399 - L.C. 302.

"Las Calaveras"

In this case, on application
of P. Della Torre, Esq., U. S. Attorney, made in
open Court, it is ordered by the Court that an
appeal on behalf of the United States from the
final decision of this Court rendered in said
cause at the present term, be and the same is
hereby granted; and that a certified transcript
of the pleadings, evidence, depositions and pro-
ceedings in the said cause be sent to the Su-
preme Court of the United States without delay.

Ogden Hoffman
U. S. District Judge

399.

United States District Court, Northern District of
California.

The United States

vs.

Juan Pico, et al.

ORDER.

Granting appeal,

Filed *February 2* 1858,

John A. Monroe,

CLERK.

By *H. H. Chivers*

DEPUTY.

399 ND
PAGE 73

In the District Court of the United States
for the Northern District of California

Francisco Arco et al

vs

The United States

Please take notice that on Saturday
the 6th day of July 1861 at the opening of the Court
on that day or as soon thereafter as counsel can
be heard. A motion will be made on behalf of
James Poy interposed in this case, to close the
proof in relation to the final Survey of these
Lands confirmed by the Decree in this case, and for
the entry of an order and decree of this Court
confirming the final Survey of the Surveyor
General heretofore returned to this Court in
pursuance of an Order of this Court, and for
such further order as the Court shall see fit
to grant.

Yours &c
W. Stone

Atty for Intervenor

To Wm. Sharp Esq
U.S. District Attorney

399 ND

~~413~~

ND

Recd July 10th 1861.

W. W. S.

399 ND
PAGE 75

U. S. District Court

399 ND
PAGE 76

The United States

vs

} No. 399.
}

Fran: Pico et al

San Francisco Dec 9. 1857

Gentlemen,

You are hereby notified that I will examine David J. Douglas in the above case on the part of the United States on Wednesday next the 11th instant before J. Edgar Hynes Esq. Special U. S. Commissioner at the office of the clerk of this Court, at 11 O'clock, A.M.

Yours &c

P. Della Torre

U. S. atty

Wm Stautley King }
attys for Claimants }

399

U. S. District Court

The United States

vs

José Pico et al

notice

Recd copy within
this 9th day Dec ad 1857,
Hawley & King

399 ND
PAGE 77

399 ND
PAGE 78

Francisco Pico vs }
 } In the United States Court
 } for the Northern District of
The United States } California

"Las Calaveras"

Page of
Transcript

- 13. Copy of Original map which accompanied
- 17 (Translation) Petition of Francisco Pico to Gov dated Aug 1846. J A Suttis' Certificate dated 1 May '46 that the land was vacant. References & favorable reports.
- 19. Translation of following decree - "In view of the reports contained in this Expediente in favor of the interested party, let the title deed be issued to secure the ownership without prejudice to what may belong to the bordering land owners - Angeles June 11. 1846. Pico"
- 23. Translation of grant from Governor Pico dated 20 July 1846.
- 3. Petition of Francisco Pico to Land Commrs.
- 5 19 Feby 1853 - Separatus of W. A. Richardson
- 6 26 March 1853 " " José Noriega
- 8 4 Aug 1854 " " Juan B. Alvarado
- 10 15 April 1853 " " Ant^o Maria Pico
- 25 & 26. Opinion & decree rejecting the case because the grant was made 20 July 1846. They had previously decided "that the power of the Governor of Cal^a to make grants under the Mexican laws ceased on the raising of the American flag at Monterey 7 July 1846"

No 399.
In the United States Court
for the Southern District
of California

Francisco Pico }
et al }
vs }
The United States }

"Las Calaveras"

Index.

399 ND
PAGE 79

Court No. 399. Land Grants No. 602.
Francisco Pico to "Las Calaveras"

399 ND
PAGE 80

This claim, it will be perceived by the Opinion of the Land Commissioners, was rejected solely because the title in form was issued at Los Angeles on the 20th July 1846, or thirteen days after the raising of the American Flag at Monterey.

- The facts exhibited by the papers are
- 1st That on the 1st May 1846 Francisco Pico applied to J. A. Sutter, the proper Officer for the District, in which the land is situated, for his necessary Certificate that it could be granted, which was given the same day.
 - 2^o That on the 8th May Fr. Pico petitioned the Governor for a grant of the land.
 - 3^o That on the 12th May, Guerrero, the Prefect of Pueba Buena made a statement that the land was in the district of Sutter, and that he therefore could not certify.
 4. On the 18th May Manuel Castro (the Secretary,) at Monterey made a favorable report on the application to the Governor.
 5. That the Expediente shows the following granting decree by the Governor.
"In view of the reports contained in this Expediente in favor of the interested party, let the title deed be issued to secure the ownership, without prejudice to what may belong to the bordering land owners.
Angels June 11. 1846
Pico's
 - 6^o That the title in form, duly signed by Governor Pico,

The Secretary's Memo, and Certified to be Accurate,
was issued in favor of the claimant, at Los Angeles,
on the 20th July 1846.

399 ND
PAGE 81

This delay in issuing the title in form after the Cession
was made by the Governor, and upon which account
alone the claim was rejected, was doubtless owing to
the disturbed state of the then government preventing
that usual prompt attention by the officials, to the
routine of their ordinary duties, altho' it was, by no
means unusual for the title not to be issued until
some time after the grant was made by the Governor's
decree.

The Supreme Court in the Opinion on the Manpona
Claim say - "There can be no question as to the power
of the Governor of California to make the grant. It
"has conditions attached to it, but these are conditions
"subsequent." "For if at the time the sovereignty of the
Country passed to the United States, any interests, legal
or equitable, remained vested in Alvarado as his office,
the United States, are bound in good faith to uphold
and protect it." "It is the duty of the Court to protect
rights obtained under them [i.e. the Mexican laws &c.]
which would have been regarded as vested and valid
by the Mexican authorities," and that - "The omission
or inability of the public authorities, to perform their
duty, cannot, upon any sound principle of law or
equity, justify the property of the individual to the State".

The simple question therefore is, whether Pico
on the 11th June 1846 had an interest in the land
either legal or equitable, in consequence of the
Governor's decree in his favor of that date, for if he
had, then it has been decided that the U.S. are bound
to uphold and protect it.

It will be perceived that all the initial proceedings

was regular and in the usual form, and, including the granting decree by the Governor, were long before we took possession of any part of the Country, and if the public Officers had promptly performed their duty, by preparing the title in form, no question would ever have arisen as to the validity of the Claim. For it was the duty of the public officers to have prepared it for the signature of the Governor, and it has been decided that their neglect cannot be allowed to work to the injury of the grantee.

The land in fact became the property of the claimant so soon as the Governor made his favorable decree, for to use his own words, the title in form was "to be issued to secure the ownership" or to be the customary evidence placed in the hands of the interested party to show his rights to the land, the granting decree a conception remaining on the public files.

No one will contend that if the former government had continued in power, that this decree of May would not have been considered by it as vesting a title in the grantee. It might as well be contended, that because the law of 1851, under which the Mariposa claim was confirmed by the Supreme Court, provides that a "patent" or "title in form" should be issued to the party to whom the land was granted by that decree, that the decree in that case gave the claimant no legal or equitable interest in that tract. The decree of the Governor in this case is as much a recognition of the rights of Pico to the "title in form" as the decree of the Supreme Court was of the right of Fremont to his "patent." And under the Mexican laws & usage, the Governor's decree vested in party in whom favor it was made, a title fully equal to that which

under our laws would be held by virtue of a decree of the Supreme Court.

The Land Commissioners have certainly taken a strange view of the case in rejecting the claim, because the title in form was issued at Los Angeles, 13 days after our flag was raised at Monterey, although the Mexican authorities were then exercising their usual jurisdiction at the Seat of government, and no Capitulation or surrender of the Country had been made to the United States; for, even admitting for the sake of argument that all their acts at Los Angeles after the raising of the flag at Monterey were void and of no legal effect, the only result would be to make the title in form void, and as much a nullity as if it had never been issued; and therefore we stand upon the previous granting decree of the Governor, for no one will contend that the issuing of a void grant could avoid the same negating the previous legal proceedings of the Government.

This case is almost precisely similar to that of Rafael Sanchez claiming "San Lorenzo" under a decree of the Gov made 18 Feb, 1846 & when the title in form was not issued until the 27 July, 1846, and rejected by the Land Board on that account. That claim was argued before Judge Ogier and confirmed by him, & the Attorney General has given notice that he would not appeal from his decision. A copy of the Opinion of Judge Ogier & of the Decree of the Court vacating the appeal in consequence of the Attorney General's decision have been filed in this case.

Stanly & Smith
Attys for Claimants

399 ND
PAGE 83

Cont No 399. Land Co 602

Francis Pico

San Carlanas

Pris for claimants

Land Cases
No 674.

This case is precisely the same
as that of "Las Calaveras"
Ct No 399. Land case No 602
now before Judge Hoffman.

— 399 ND

PAGE 84

Both claims were rejected by the
Court upon the same principle.

Judge Ogier confirmed this case,
and the Att. Gen. has acknow-

ledged the correctness of his
decision by dismissing the
appeal - Copy of Judge Ogier's
opinion in this case filed
with Judge Hoffman in No 399.