

CASE No.

402

NORTHERN DISTRICT

PART OF ORCHARD OF
SANTA CLARA GRANT

THOMAS C. LARKIN
CLAIMANT

LAND CASE 402 ND

142 pgs.

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PAGE 1

TRANSCRIPT
OF THE
PROCEEDINGS

IN CASE

NO. *754.*

Thomas O. Leaskin

CLAIMANT

VS.

THE UNITED STATES, DEFENDANT,

Part of
FOR THE PLACE NAMED

"Orchard of Santa Clara"

FOR THE YEAR 1871

THE GENERAL ASSEMBLY OF THE STATE

1871

OF THE STATE

OF

THE STATE

PROCEEDINGS

OF

THE GENERAL ASSEMBLY

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 *Thomas C. Sarkin*
for ^{part of} the Place named
Orchard of Santa Clara
was presented, and ordered to be filed and docketed with No. 754, 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, November 5 1853.
In Case no. 754, Thomas C. Sarkin for the title of the Orchard of Santa Clara, the deposition of John Foster, a witness in behalf of the Claimant, taken before Commissioner R. Aug. Thompson, with documents marked N. S. nos 1 & 2, was filed.

(vide page 7 of this Transcript.)

San Francisco, July 25 1854.
In the same Case the Counsel for the Claimant filed the following Stipulation, to wit,
(vide page 7 of this Transcript.)

Case no. 754 was submitted on facts and taken under advisement by the Board.

In the same Case the Counsel for the Claimant

filed the documents marked "Exhibits
No. 3, 4, & 5", with translations thereof, annexed
thereto, described in the Stipulation filed this
day, as evidence in this case,
(vide page 1 of this Transcript.)

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San Francisco, November 28th 1854,
In the same case the W. S. Assn. Law Agent
filed the following motion & Affidavit, to wit,
(vide pages 64 of this Transcript)
which was taken under advisement

San Francisco, December 6th 1854,
In the same case the W. S. Law Agent and his
Associate filed their joint Affidavit, and the Af-
fidavit of Benito Diaz,
(vide pages 64 & 65 of this Transcript.)

San Francisco, December 19th 1854,
In the same case Commissioner Alpheus Felch delivered
the Opinion of the Board upon the motion of the
W. S. Assn. Law Agent filed on the 28th November
granting the same,

whereupon it was Ordered, That
this case be restored to the trial docket,

San Francisco April 3rd 1855.
Case no. 754 was submitted on briefs.

In the same case the counsel for the Claimant
filed the following Stipulation, to wit,
(vide page 78 of this Transcript)

San Francisco, Sept. 8th 1855.
In the same case the counsel for the Claimant
filed the following Stipulation, and the papers
therein mentioned, to wit,
(vide page 79 of this Transcript.)

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San Francisco December 18th 1853,

In the same case Commissioner A. Aug. Thompson delivered the opinion of the Board rejecting the claim.

(See page 81 of this Transcript)

and the following order was made, to wit,

(See page 82 of this Transcript)

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Petition

To the Board of Commissioners for ascertaining and settling Private Land claims in the State of California

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Your petitioner Thomas O. Larkin of the City and County of San Francisco, State of California, respectfully represents to your Honorable Board that he claims and undivided two thirds of a certain tract of Land called the Truery or Orchard of Fruit trees of the Mission of Santa Clara, with the houses adjoining it located in front of the Establishment, containing about fifteen acres of Land more or less situated in the County of Santa Clara in said State of California.

That the claims the Land in fee by virtue of a grant, bargain, sale, and transfer made to Citizen Juan Castañeda, Luis Arenas and Benito Liay under the authority of the Mexican Government and in consonance with a decree of the Departmental Assembly of California of the thirteenth day of April A.D. one thousand Eight hundred and forty six, by Pio Pico, Constitutional Governor of the California bearing date the 30th day of June One thousand Eight hundred and forty six.

Your petitioner further represents, that the said grantees Juan Castañeda and Benito Liay on the Eleventh day of March One thousand Eight hundred and forty seven, sold and transferred all their right title

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and interest (the same being an encave
de a two thirds) in and to said tract
of Land, with the houses adjoining
it and all things thereunto belonging
appertaining situated opposite to the
Establishment to Thomas O Larkin
your present petitioner, who is now the
Owner thereof having never sold or
transferred the same.

And your petitioner would further represent
that judicial possession of said tract of
Land was given to the said grantee
on or about the 14th day of October
One thousand eight hundred and forty
Six: That the boundaries thereof are
definite and certain; and that they and
those claiming under them, have been
in the peaceful possession thereof ever
since; and that he has no knowledge
of any interfering claim, except that
of One Osio, which your petitioner
believes has been defeated & abandoned.

Your petitioner presents herewith a copy
of the Original Grant, bearing date and
transfer in the Spanish language togeth
er with a translation of the same, and
will make further proof of title if
required by the Board.

Your petitioner prays your Honorable
Board to take into consideration his claim
to an undivided two thirds of the said
tract of Land, and decree his title to
be made and confirmed the same.

Filed in Office
March 3 1853
Geo. Fisher
Secy

And your petitioner well ever pray.
San Francisco March 1st 1853

A. C. Whitcomb - Counsel
for claimant - Thos. O Larkin

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Depositem
of
No. Forster.

Office of the Board of
Commissioners &c. &c. &c.

This day before

Comr. R. Aug. Thompson came John
Forster, a witness in behalf of claimant
Thomas O. Larkin No. 754 who after
being duly sworn deposed as follows

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Testimony in behalf of claimant -
Present Whitcomb Atty for claimant
and R. Greenhous Associate Suro Agent.

Witness states his name to be John
Forster, age thirty eight years and
resided Los Angeles County Cal.

Question by claimants Atty.

Look upon the document
filed in this case marked as Exhibit
Nos. 1. and 2. and with the initials R. S.
and state if they are respectively true and
Correct Copies with the addition of the
certificate of the Secretary of this Comm
ision attached, of the original docum
ents now Exhibited to you marked
B and D filed in case No. 743 in this
Commission, and marked also title and
receipt and state also whether the
Signatures of Pio Pico and Jose Matias
Moreno where they occur on said
Originals are genuine and also your
means of knowledge

Answer. I have compared &
Examined the said Copies and Originals
and find the Copies to be true and Correct
with the exception of the certificates

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referred to in the question - I am acquainted with the signatures of Pio Pico and José Antonio Moreno. I have seen them write frequently, and I believe their signatures where they occur on said originals are true and genuine.

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Question by Same. State what you know in relation to the transactions referred to in said document.

Answer. I know that there were some transactions between the parties of the character there referred to and that Pio Pico remained satisfied with the settlement or arrangement shown by said documents.

Question by Mr. Greenback.

State in whose hand writing is the body of the original deed or act of sale above referred to, marked B

Answer. It is in the hand writing of Francisco Lopez now deceased.

Question by Same. Do you recollect whether or not Gov. Pio Pico was in Los Angeles on the 30th. of June 1846 the date affixed to said deed of sale

Answer. I cannot say as I was not there myself.

John Foster

Sworn to & subscribed
before me Nov. 5th, 1853

R. Aug. Thompson
Comr.

Taken in office Nov. 5. 1853

Geo. Fisher
Secy

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Deposition
of
Aug. Reaman

United States of America } ss:
State of California }

San Francisco June 27. 1854

This day personally appeared before
Peter Lott, a Commissioner for taking
testimony to be used before the Board
of U. S. Land Commissioners in said State
Augustus Reaman, a witness on behalf
of the claimants, J. W. Reaman et al, in
Case No. 743 on the Locke of said Board
and said witness being duly sworn on
Oath deposed in English as follows,
to wit:

The U. S. Associate Land Agent is present

Questions by Claimants Licensed.

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

Answer. My name is Augustus
Reaman, my age 24 years my residence
Santa Clara County California.

2^d Question. Are you acquainted
with the Orchard of Santa Clara
which is claimed in this case, if you how
long have you known it?

Answer. I am acquainted
with it and have known it since 1849

3^d Question. Describe its
relative position to the Mission Church
of the Mission of Santa Clara?

Answer. It is about a half
mile distant from the Church, in front of
said Church, and nearly in an Eastern
direction therefrom.

4th Question. If there be any other

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Orchard or Guacen of Santa Blanca, state what it is, and its relative position to Saia Church?

Answer. There is a Vinyard South of the Church, about 100 Varas from Saia Church I know of no other 5th. Question. How much land is contained in the Enclosures claimed in this case?

Answer. I suppose there are between 10 and 12 acres.

Copy Examined by U. S. Associate Law Agent.

1st Question. What relation are you to J. M. Reaman one of the claimants in this case, and what interest have you in the result of the case?

Answer. I am a son of J. M. Reaman, I have no interest in the result of the claim.

Augustus Reaman
Subscribed and sworn to before me
on this 27th day of June A.D. 1854.

Peter Lott Commissioner
for taking testimony &c

Filed in office June 27. 1854
Geo. Fisher Secy

Deposited
of
A. M. Pico

United States of America
State of California

San Francisco June 27. 1854

This day personally came before Peter Lott a Commissioner for taking testimony to be used before the Board of U. S. Land Commissioners in Saia State, Antonio Maria

has a receipt on behalf of the claimants

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Fico a witness on behalf of the claimants
J. M. Freeman et al, in Case No. 742. on
the Locket of Luis Bana and said
witness being duly sworn, on oath depo-
sited in Spanish, which was interpreted
into English by the interpreters to Luis
Bana as follows, to wit:

The U. S. Associate Suro Agent is present

Questions by claimants' counsel

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

Answer. My name is
Antonio Maria Fico, my residence Santa
Blanca County, California, my age 45 years

2^d Question. Are you ac-
quainted with the hand writing of Pio Fico
and Jose Matias Moreno, if you state
your means of knowledge, and look at
the document marked "Exhibit B No 1.
and annexed to this deposition and state
whether the signatures of those persons,
wherever they appear in said document
are their genuine signatures?

Answer. I am acquainted
with the hand writing of both of the
persons, named, having often seen them
write, and their signatures in this docu-
ment written, are their genuine signatures
both of them.

3^d Question. Look at document
marked "Exhibit D No 2" and also annexed
to this deposition, and state whether or not
the signature of "Fico" thereon written is
the genuine signature of Governor
Pio Fico?

Answer. This is his genuine signature - he signs his full name some times, and only Pico at other times. I have seen him sign it both ways.

4th. Question. Are you acquainted with the Orchard, or Close of Land claimed in this case, if you, state whether or not it was enclosed at the date of the grant, if you, by what kind of fence?

Answer. I am acquainted with said Orchard, It was enclosed with an Adobe wall at the date of the grant.

5th. Question. Are the claimants in use and occupation of said piece of ground up to the present time?

Answer. They are.

6th. Question. State if you know what quantity of Land is embraced in the Enclosure of which you have spoken?

Answer. About 300 Varas square, more or less.

Crop Examined by U. S. Associate Survey Agent

1st Question. What was your intercourse with Moreno, was it such as to enable you to swear to his signature without doubt?

Answer. I have seen many communications from him in an official capacity and have seen him write. I know his signature well, and have no doubt in the testimony I have given.

2^d Question. Is this the only tract of Land you know by the name of the Orchard of Santa Clara?

Answer. This old garden

and one smaller. The large one is the one I testify of in this case.

3rd Question. What is the name of the smaller one?

Answer. The name is *haca* there is the smaller garden (*huaita chica*)

4th Question. By what means do you know that it was the Orchard which was claimed in this case?

Answer. From common report.

Re examined by Plaintiff's Counsel
1st Question. Have you or not lived near the Orchard of Santa Clara which is claimed in this case, if you have long have you known it, of your own personal knowledge, and do you not know otherwise than from common report that Joshua W. Redman, Charles Clayton, and the heirs of James M. Jones claimed the same?

Answer. I have been living at San Jose since 1831. and have known the Orchard all that time and I know that the persons named, claimed the same because they have had it in their possession.

Antonio M. Pico

Subscribed and sworn to before me on this 27th day of June A.D. 1854

Peter Lott Commissioner for taking Testimony &c

Filed in Office June 27. 1854

Geo. Fisher Secy

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1st Deposition
of
J. A. Forbes

United States of America
State of California

San Francisco Dec^r 28. 1851

This day came before Peter Gott Commissioner for taking testimony to be used before the Board of U. S. Land Commissioners in said State, James A. Forbes, a witness on behalf of the claimant of the United States in case No. 742 wherein J. M. Reedman et al are claimants, and said witness being sworn deposed as follows.

The Counsel Judge Thornton for claimant is present.

Questions by U. S. Law Agent

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

Answer. My name is James A. Forbes, my age 49 years, my residence San José California.

2^d Question. Are you acquainted with the Orchard of Santa Clara claimed in this case, and with Juan Castaneda, if you state how long you have known them?

Answer. I am acquainted with both the orchards and with Castaneda. I have known the orchards about 26 years, and John Castaneda I have known ten years before his death.

3^d Question. Who was in the possession of said Orchard from the time you first knew it till 1846, and after that time, and if it changed hands, state who held the possession after such change and under what circumstances such change

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of popepin took place?
 Answer. That Orchard was in the popepin of the Missionary Priests of the Mission of Santa Clara up to 1846 - from 1846 to 1849 or 1850, I do not recollect which of those latter years, it still contin- ues in the popepin of said Missionary Priests. In 1850 as near as I can recollect the date, One Clayton obtained popepin of said Orchard in a surreptitious manner, and he had pretences to rent one of the Outer buildings for a stable from a Missionary Priest then in charge of said building, and he took popepin of the Orchard without any author- ity, I think about two years since said Orchard was transferred by said Clayton to Joshua W. Redman. I say Clayton transferred it, because it was given up by Clayton when Redman took it, but I have encountered said Redman - pretend to claim it under some other title. About the time that Clayton took popepin of said Orchard, Antonio Maria Osio claimed to have the popepin thereof under some title, though I never saw said title. I know that the Priest gave said Osio popepin of said Orchard after some litigation in the courts at San Jose, I was a witness to the act of popepin myself. After Redman took popepin he kept it and is still in popepin of said Orchard.

4th. Question. What is the value of said Orchard, and the annual value of the use and produce of said Orchard for the last few years since said

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Reeman has had the possession of the same?

Answer. I think said Orchard is worth from twenty thousand to twenty five thousand dollars. So far as the value of the annual product is within my knowledge I think it somewhere about \$5000 to \$7000. My estimate is based partly upon the number of trees

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5th. Question. Are you acquainted with Pio Pico, if you, how long have you known him?

Answer. I am acquainted with him. I have known him since 1832.

6th. Question. Do you recollect seeing the original grant upon which the claim in this case is founded, and the memorandum of monies paid by the grantees at the time said grant purports to have been given, exhibited to you at the room of the Law Agent when you made your affidavit herein, if you, state in whose handwriting the body of said document respectively was made or written?

Answer. I recollect making my said affidavit, which is marked "A.P.G." as an exhibit to this deposition and now on file in this case, on the occasion of my making said affidavit I remember having seen the original grant and the memorandum of the receipt of monies horses &c. which papers are now referred to in this interrogatory. I believed the body of the said documents were in the handwriting of Juan Castenada before mentioned. I am acquainted with said Castenada as handwriting having seen him write

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7th Question. Do you know where
Don Pio Pico, former Governor of California
and Don Juan Castaneda were in June,
July and August in the year 1846? if you
state where they were, and your means
of knowing their whereabouts at that time?

Answer. I know that Pio Pico
left the city of Los Angeles on the 17th day
of June 1846. I was there myself on that
day. I saw him there, he went then to
Santa Barbara by land, I saw him there
on the 30th of that month, he was ac-
companied by his Governor's Suit, Secretary
&c. I left Santa Barbara on the 3^d of July
and left Pico there. Don Castaneda
was not at either of the places, Los
Angeles nor Santa Barbara, at the times
I have mentioned, nor can I of my own
personal knowledge state where he was.
On my return to Santa Barbara on the 18th
of July 1846 whether I came by water
from below, I found that Don Castaneda
was absent from that place.

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8th Question.

State whether
Don Pico could have been at Los Angeles
without your knowledge, between June
17th. of June and the 30th of same month
in 1846, and if nay, state your reason
for saying so?

Answer. He could not have
been there without my knowledge, I have
already stated that he left Los Angeles
on the June 17th of June and went to
Santa Barbara; a few days after he left
Los Angeles, I left for San Pedro to go to
Santa Barbara by sea, on the 30th of

Said June I had official communications with him at Santa Barbara, therefore I know he was at the latter place.

Crop Examined by Judge Thornton for defendant

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1st Question. In your answer to 3rd Question in Chief, you state that one Clayton obtained possession of said Orchard, state if you know his Christian name, and also state if you know of any lease, or any title derived from any one in said Clayton?

Answer. I do not know his Christian name, I believe he was a brother of Mr. Charles Clayton. I never knew of any lease to the aforesaid Clayton, but I did hear of the sale of the right of some person in said Orchard to said Charles Clayton.

2nd Question. State how you know of the renting of one of the buildings to said Clayton for a stable?

Answer. I learned it from the Priest of the Mission who told me so

3rd Question. Said said Priest in this same conversation say that he rented said building for the benefit of said, or for the benefit of the church as Priest thereof?

Answer. I do not recollect.

4th Question. Do you know of Gen. Kearney taking possession of the Mission, Orchard &c. Appertenant thereto and constituting the Priest as an agent to take care of the same for the Government of you, state what you know in relation

of you, state what you know in relation

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thereto?

Answer. I know that Gen. Kearney never did take possession of that Mission. I know that in consequence of the occupation of the Missions of San Jose and Santa Clara by several persons in 1846. Commodore Stockton issued an Order for the maintenance of the resident Priest of Santa Clara in the possession of both Missions. I know that Governor Mason sent a Military force to Santa Clara to expel certain Emigrants who had taken possession of that Mission, or some of the buildings and Orchards thereof, as also of the Mission of San Jose, and I know that those Emigrants were expelled from the Mission of Santa Clara and that the possession thereof was given to the Priest. I also know that Gen. Kearney in consequence of further disturbances, issued a further Order to the same effect to maintain the Priest in the occupancy of those two Missions.

5th Question.

Do you know whether or Mr. Steinberger ever had any lease and possession of said Orchards and if from the Priest or any body else?

Answer

I know that said Steinberger never had any possession, but I also hear that he was trying to negotiate a lease from said Priest. I also heard that that lease had been frustrated. I do not recollect by whom or how. I think it was by Gen. Riley's intervention, but I am not certain.

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6th Question. Do you know whether or not Saice Osio ever had possession of that Orchard, if so, at what time?

Answer.

I have stated that he had possession, about the time of Clayton taking possession, in my Examination in Chief herein.

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7th Question. Do you know of any efforts being made by the priest to maintain the possession of Saice Osio?

Answer.

I know that anterior to the possession occupied by Osio, the present priest of Santa Clara opposed that possession, and that at the time of the occupation by Saice Clayton, he (the priest) did try to maintain Saice Osio in possession, indirectly I may say.

8th Question. Did you not understand that Clayton held under Osio?

Answer. I did understand that Mr. Charles Clayton, was endeavoring to negotiate a lease of the premises from Osio, and so far as my recollection serves me, he succeeded in making some arrangement with Osio, which was afterwards frustrated by some agent or agents of Saice Osio.

9th Question. Was not this arrangement made by Clayton with the Priest of the Mission as agent of Osio instead of with Osio himself?

Answer. I do not recollect, I know there were some negotiations between the priest and Mr. Charles Clayton and I think they were in relation to that

matter, but I do not know what they amounted to.

10th Question. When you speak of the popeism by Osio, Clayton, the intervention of the priest and so on, do you speak of your own knowledge or from hearsay?

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Answer. With regard to Osio's popeism, I speak of my own knowledge, I was an assisting witness to the act of popeism given him by the priest, as regards Clayton's popeism as spoken of in my Examination in Chief, that act was publicly notorious, but I was not present in person, but I recollect after various seeing Clayton in popeism, I speak of John Clayton I never recollect his name.

Jas. Alex. Forbes

Subscribed and sworn to before me on this
28th day of December A.D. 1854
Peter Lott Commissioner.

Filed in Office Dec. 28. 1854

Geo. Fisher Secy

22 Deposition
of
Benito Léay

United States of America
State of California

San Francisco Dec. 28. 1854

This day came before Peter Lott Commissioner for taking Testimony to be used before the Board of U.S. Land Commissioners in said State, Benito Léay a witness on behalf of the United States in Case No. 743 on the Locket of said Board, wherein J. M. Redman et al are claimants, and said witness being sworn deposed in Spanish which is interpreted by the interpreter to said Board as follows:

The Counsel George Thornton for claimants is present.

Questions by M. Blaney of the U.S. Associate Law Agent.

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

Answer. My name is Benito Léay, my age 40 years, my residence in Monterey County California.

2nd Question. Do you know Pio Pico, if you, how long have you known him?

Answer. I do know him, and have known him about 30 years.

3rd Question. Do you know the Orchard of Santa Clara, and of any sale having been made thereof, if you, by whom was said sale made?

Answer. I know said Orchard, I know of its having been sold by Governor Pio Pico.

4th Question. To whom was that sale made?

Answer. To Juan Casanova, who is now and was

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Answer. To Juan Castenedas, Luis Arenas
and myself.

5th. Question. In what year
month and day was the deed of sale
written?

Answer. It was written in 1846
about the first of August, the precise day
I do not remember.

6th. Question. Where was
it written?

Answer. At Los Angeles.

7th. Question. In what year
day and month was said deed signed
by Pio Pico

Answer. I think it was signed
by him on the same day on which it was
written.

8th. Question. In whose hand
writing was said deed written?

Answer. It was written in the
hand writing of Juan Castenedas.

(8th Question objected to by plaintiffs
because, because said writing is not
proceeds)

9th. Question. How do you know
it was in his hand?

Answer. I saw him write
it. (9th Question same objection as to 8th)

10th Question. Was said
deed, the same one of which you testified
in your affidavit in this case made
Dec. 4. 1854 before Alpheus Felch
Commissioner?

11th Question objected to on the ground that
said deed is not proceeds)

Answer. The deed I am now
speaking of, is the same which was shown

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to me, when I made such affidavit
 11th Question. Did you see
 said Pio Pico sign said deed, if may,
 how do you know he signed it on the
 same day on which it was written?

(11th Question Same objection)

Answer. I did not see him
 sign it. I saw it written, and on the same
 day, said Casteneda brought it to the
 house of Arenas, where I was, with
 Pio Pico's signature to it, and I saw it,
 thus I say it was signed the same day.

12th Question. What date
 did the grant bear, of which you spoke
 in your said affidavit?

(12th Question Same objection)

Answer. It was dated June
 30th 1846.

13th Question. Why was said
 deed dated on said 30th of June, and
 not on that day on which it was written

(13th Question Same objection)

Answer. I do not know why
 it was done, sometime after it was done
 I remarked it.

14th Question. Have you lately
 seen the deed of which you have spoken,
 if you, where, where and in whose
 possession?

(14th Question Same objection)

Answer. I have seen it twice
 lately in the hands of Mr. McKine
 the Survey Agent, once in his office in
 this building, and once in some office
 on California Street.

15th Question. When you so
 saw it lately, were you satisfied upon

Examination that it was the same deed
you saw at Los Angeles in 1846?

(15th Question Same objection)

Answer: Yes it was the same
16th Question. Where were you
the week immediately before and the week
immediately after June 30 - 1846?

Answer. I was was either here
at San Francisco, or at Santa Clara
during that time, till June 30th - and
the following week I was at Monterey.

17th Question. Did you notice
the date of the said paper, when it was
shown to you by Castaneda, or was your
attention then called to it?

(17th Question Same objection as before)

Answer. I did not then
notice the date nor was my attention
at that time called to it.

18th Question. Where was said
Castaneda on the 30th of June 1846?

Answer. I am not certain where
he was, but I think he was either at
Santa Clara, or San Pablo at Contra Costa.

19th Question. What was said
Castaneda doing at that time and in whose
company was he?

Answer. He was at that
time a Captain of Cavalry in the Militia
He was with his company or a company
which was raised at the time of the
Bear Flag disturbance. Gen. Castro, Gen
Alvarado, myself Jose Anto Carrillo and
others I do not now remember were with
him at that time.

20th Question. Can you fix
any particular day about June 30th 1846

at which you were at a given place, if you state the day, the place, and who was with you?

Answer. I remember that on the 4th of July 1846 I left Santa Clara for Monterey, with 4 Soldiers and one Agnacio Esquer.

31st Question. When did you leave this part of the State for the Southern Country?

Answer. I left Monterey for Los Angeles about the 10th or 12th of July 1846.

32nd Question. In whose Company did you leave this part of the State and from what point?

Answer. I left Monterey alone and on the plain I fell in with the force which Gen. Castro had had at Santa Clara, and from that we went on together to Los Angeles.

33rd Question. State if you know when Garcia Castaneda left this part of the State for the Southern Country?

Answer. I do not know when he left. I suppose he left about those days for I met with him in the same command of Gen. Castro on the plain of Monterey.

34th Question. How long did you and Castaneda remain together and which way did you go with him?

Answer. We continued in company from the time I fell in with Castro's command on the plain, all the way to Los Angeles, and there we stopped at the same house and remained in company

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till I left Los Angeles on my return to Monterey. I do not remember the day we arrived in Los Angeles but I think it was about the 30th. of July.

25th Question. Did you see Pio Pico on your route to Los Angeles, if you where and when?

Answer. I saw him on our route at the Rancho of Santa Margarita I cannot say when.

26th Question. State if you know where Pio Pico was on the last days of June and the first days of July that year?

Answer. I do not know certainly where he was - I was in the North, though I have conjectured he was about Santa Barbara.

27th Question. Was the deed for the Sale of the Orchard of Santa Clara written on the same piece of paper with the deed of the Sale of the Orchard of San Jose?

Answer. It was not.

28th Question. Were the two deeds written on the same day or not?

Answer. I do not know, I only saw the deed for Santa Clara.

29th Question. State if you know whether there were separate receipts given for the two Orchards, or whether one receipt covered both Orchards?

Answer. One receipt was given which covered both.

30th Question. In whose hand writing was that receipt
(30th Question objected to because the paper is not produced)

Answer. It was in the hands writing of Castenedo.

31st Question. Have you seen Saiz's receipt lately, if you, where?

(31st Question Same Objection)

Answer. Yes I saw it lately in the hands of Mr. McKinnon the Law Agent.

32nd Question. Is that the same receipt, ^{which} in your affidavit you swore on Dec. 4, 1854 that you had examined in this case? (32nd Question Same Objection)

Answer. Yes it is the same.

33rd Question. Were you present at the writing of Saiz's receipt?

Answer. I was not

34th Question. When did you first see Saiz's receipt?

Answer. I do not remember precisely when it was, but it was a few days after the writing of the deed of sale

35th Question. What was the amount paid in Saiz's receipt?

(35th Question Objection as above)

Answer. It was expenses of \$3000. I do not remember the sum

36th Question. In what was Saiz's amount to be paid?

(36th Question. Same Objection)

Answer. Part in the products of the Country and part in money

37th Question. What do you know about the payment of Saiz's sum or was it ever paid by you or any one else?

Answer. Castenedo has an arrangement with the Governor, that he would give the Governor a note for Saiz's

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I am, and since Micheltorena afterwards told me he had given such note to the Governor, payable when the Mexican Government should again take possession or a Mexican Governor again come into office. I never saw any of it.

(This answer to 37th Question objected to as hearsay testimony)

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38th Question. Was possession of Ruiz Orchard ever taken under said decree by yourself or any one else?

Answer. No it was not

39th Question. Did you ever ask for Ruiz possession, if you, from whom & when

Answer. I asked for the possession from Padre Real through Don Antonio Osio in 1846.

40th Question. State what took place when you, ^{so} asked for the possession, was the Ruiz possession granted or refused?

Answer. The padre refused to give me possession, and since he had a title to Ruiz Orchard himself from Micheltorena, and I afterwards applied again to the padre, for possession and he then told me another title had appeared in favor of Don Anto. Osio.

This answer to 40th Question, objected to as hearsay.

41st Question. Did Padre Real tell you for whose benefit he himself held a title from Micheltorena, if you, whose benefit did he say it was for, according to the grant?

41st Question objected to as calling for hearsay.

Answer. He told me he knew it for the benefit of the Mission.

42nd Question. Did you ever see your share in Saice Orchard, if yes, when?

Answer. I sold my share there in 1850 or 1851. I do not remember which year.

43rd Question. To whom did you so sell?

Answer. To Reaman Watson and Clayton.

44th Question. Were these persons in the possession of Saice Orchard at the time you sold to them.

Answer. I believe they were. Wrote Examined by claimants deceased

1st Question. In your Answer to 15th question in brief have you said that you saw this deed of sale of the Saice Orchard of Santa Clara in an office on California Street, please to state particularly when it was and in what part of this city and what kind of office that was, in which you saw it?

Answer. The place where I saw the paper was a house on California Street on the North side about three squares below the Santa Commission. There were boxes and bales there, as though it were a mercantile house. I have gone in there at the request of Padre Nobles with him to answer some questions respecting the deed of sale in this case, and while I was there the Law Agent Mr. McKean came in with

same paper. This occurred about a month ago, a little more or less.

2nd Question. When did you first discover that the date was wrong, of the said deed of sale which was made to you and others, of which you have spoken as above?

Answer. I discovered it ^{just} a few days after I sold my share in said Orchard to Benjamin Watson and Clayton, and at the time I sold Castoreo's share, thereon which was about 1850 or 1851. I do not remember the exact time.

3rd Question. Was this deed present before you at either of the sales mentioned in your last answer?

Answer. It was not at either of them.

4th Question. You have stated that there was a sale of said Orchard of Santa Clara to yourself and others, at what time was that sale made?

Answer. It was made in 1846.

5th Question. Was this sale which you say was made in 1846 made before or after the 30th of June of that year?

Answer. It was made after the 30th of June of that year.

6th Question. How long was it after said sale was made, that the deed was written out and delivered?

Answer. I do not know because the deed was made by Castoreo.

7th Question. Was the sale of the said Orchard made on the same day that the deed was written to which

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you refer?

Answer. I do not know whether the agreement to sell was made between Castañeda and the Guano on the same day the deed was written or not.

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8th Question. At whose instance did you come forward to make your affidavit of the 4th of December A.D. 1854 of which you testified in chief herein?

Answer. I came at the instance of Juan Noblo.

9th Question. Have you in any conversation with any person in the City of San Francisco or Elsewhere on the subject of the affidavit which you made on the 4th of December before the Board, and about giving your testimony, ever said that you were to receive a reward for giving your testimony against this claim?

Answer. I have never said I was to receive any reward, but I have said that I was to receive pay for my expenses.

10th Question. How much money were you to receive?

Answer. I was to receive no specified sum.

11th Question. How much have you already received?

Answer. I think I have received about two hundred dollars as near as I can remember, a letter was also.

12th Question. Is there no understanding there after this deposition is closed you are to receive a specified sum of money?

Answer. No, nothing more than my expenses.

Answer. No, nothing more than my expenses.

13th Question. Have you had any conversation with Jas. Le Brano in the city of San Francisco on the subject of the affidavit which you made on the 5th of December 1854 before this board, or about your giving testimony in this case, if you, when did that conversation occur, and what did you say as to the money which was to be paid you for testifying against this claim?

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Answer. I have had a conversation with said Brano on the subject of said affidavit. Brano proposed to me that he would give testimony in this case, and asked me how much Pedro Noble would pay. I told him I did not know, he could go and see the Pedro and arrange it himself. Brano told me he had not been able to effect an arrangement with the Pedro about it. I and Brano have had many conversations, in which we have both made misrepresentations to each other, to receive each other. The conversation I had with Brano about said affidavit was held at the St. Francisco Hotel in this city some three or 4 days after I made said affidavit. As to what I said to Brano about what money I was to receive for testifying against this claim, I have told Brano many lies.

14th Question. Did you not tell said Jas. Le Brano in the city of San Francisco, within the last few months that you were to receive money as a reward for testifying against this claim?

and of you what amount of Money will you inform him you were to receive?

Answer. It was only about a month ago, a little more or less, that I learned anything about this claim, then Saice became informed me about it, and asked me if I would go and see the Attorneys and the Bishop and the Judges about it and I told him I would not go. I told him I was to receive my Expenses, but I did not tell him I was to receive any reward. He told me he would go with the party that would pay him the most. Sometimes he was with the Judges, sometimes on the other side.

15th Question.

Did you ever mention to Saice or any one the sum of \$1000 in the Conversations you say you had with him as a sum to be paid to you either directly or Contingently for testifying against this claim?

Answer. I have mentioned to him \$1000, \$2000, \$3000, and \$4000 at different times, as sums which I am to receive for testifying against this claim. It was false, but I told him so to get rid of him. He told me I had done a poor business by taking sides with the Judges, that if I had only taken sides with him he could probably have gotten me \$4000 or \$5000 from the Attorneys.

16th Question.

Since you ever had any conversation with Saice or any one about your Saice Affidavit of Sec. 4 before you made Saice Affidavit?

35- Answer. I had not. because never knew anything about it, till after I had made said affidavit.

Re examined by U. S. Associate Law Agent

1st Question. From whom have you received the \$100. of which you speak in your answer to 11th Question on Cross Examination? And state why and under what circumstances you received it?

Answer. I have received it in different sums from Padre Nobles in part, and from the Bishop in part, to whom I applied for it to pay for my expenses here, because I have nothing to eat, and needed it for my necessary expenses—

2nd Question. Have you ever received any amount of money from the Government in payment for your present attendance here as a witness, and how long have you been in this city attending as a witness?

Answer. I have not received any from the Government and I have been here upwards of a month as a witness.

3rd Question. Have you been solicited to attend as a witness in this case by any other person besides said Padre Nobles? And how did he solicit you?

Answer. The said Padre has not solicited me to attend—Jose Noriega asked me to come, and I afterwards at Santa Clara received a letter from the Bishop asking me to come.

1th Question. Have you been requested by Saice Saice or the Bishop to testify respecting this deed of Sale in any other Court besides in this Commission?

Answer. Saice Noble has requested me to give my testimony in this matter at the Clerk's Office in Monterey.

2th Question.

State the inducements and reasons given to you in the Saice letter of the Bishop, in requesting to to attend as a witness in this case?

Answer. He requested me to come and give my information in aid of this matter about the Orchard. I do not know the exact contents of the letter.

3th Question. State accurately the purpose you have in making the misrepresentations of which you speak, to loan and with what view you made them?

Answer. My reason for telling those things was, that he told me Saice had three hundred and fifty thousand dollars, and I had taken Saice with him, and I told him at different times these stories.

4th Question. State whether the following statement in answer to the 13th interrogatory on cross Examination herein is literally true, to wit, "It was false but I told him so to get rice of him?"

Answer Yes it is literally true, and I had the further purpose of finding out what his intentions were in reference to myself.

5th Question. Who has possession of the Original deed of Sale of Saice Orchard, from the time it was written

Sacra Archaid, from the time it was sold

at Los Angeles till the time of your sale to Watson, Clayton, and Peaman?

Answer. It remained in the possession of Casteneda till about November 1846, when it was delivered to Antonio Maria Osio for the purpose of enabling him to obtain possession of the Archaid by presenting said paper to Juan Peas, soon after it was delivered to Osio he returned it to Casteneda, after that Thomas O'Sarkin had it 3 or 4 years, and then he sent it by my agent Arenas to me, about two days after I received it from Sarkin Don Luis Arenas sent for it to me at Monterey and I sent it to him.

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9th. Question. Did you ever make an absolute sale of your interest in said Archaid of Santa Clara to Thomas O'Sarkin?

Answer. I made a conditional one as sale to him, but I never made an absolute one.

10th Question. State fully how Thomas O'Sarkin pretends now to claim your share in said Archaid?

Answer. I suppose he does it by some trick of his, I never made him a full sale, but a conditional one, and the conditions having failed on his part, he sent me back the title paper I sold to Sarkin and he accepted on the condition that if he could get possession he would pay for it, he kept the papers three or four years, and never got possession of the same, and when he was about to leave the County on a visit to the United States or Mexico, I sent my agent

Sereno to him to have a settlement of
accounts, he owed me about \$1000 - but
he told Sereno he owed me nothing but
my papers, and he sent them to me.

He never paid me anything for the orchard
and never took possession of it, about
two days after he gave Sereno the original
deed - he sent to me for a copy of it,
I went before Philip Rouch and told
him Luther Coates had a copy, but that
I wished to keep the original deed to
myself, Luther got the copy, and I
suppose, if he has anything to show for
his pretended claim, it must be that
copy.

Benito Diaz

Subscribed and sworn
to before me on this 29th
day of December A.D. 1854

Peter Lotz Commissioner

Filed in Office Dec. 29th. 1854

Geo. Fisher Secy

Deposition of
Luis Arenas

United States of America
State of California

San Francisco June 8. 1855

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This day came and was sworn before
Peter Lott, Commissioner for taking testimony
to be taken used before the Board of U.S.
Land Commissioners in said State Luis Arenas
a witness on behalf of the United States
in case N^o 712 on the Docket of said Board
wherein J. Mc. Redman et al are claimants,
and said witness, being sworn deposed as
follows

The claimants counsel Judge Thornton
is present.

Questions by U S Land Agent

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

Answer. My name is Luis
Arenas, my age 60 years, my residence in
Santa Barbara County California

2nd Question. Where did you
reside during the months of June July and
August and September 1846

Answer. I recollect that I was
in San Jose in 1846 when the Americans
came and took Sonoma and the day after
I heard the news of that event, I left
San Jose for Los Angeles. I cannot remem-
ber the months,

3rd Question. Are you one of
the original grantees of the land claimed
in this case, called the Orchard of
Santa Clara?

Answer. I am

4th Question. Where were you when

you just saw the title which you received?

Answer. In Los Angeles
5th Question. In whose hands
was it at that time?

Answer. It was in the hands
of Juan Castañeda who is now dead.

6th Question. Who went with
you from San José to Los Angeles at that
time, just before receiving the grant?

Answer. A man by the name
of Flores an officer in the Mexican Army
and two servants.

7th Question. How long was
said title executed by Pio Pico before
you saw it?

Answer. I do not know

8th Question. At what place did
you first see it?

Answer. At my house in
Los Angeles.

9th Question. Was any petition
ever handed to the Governor asking the
land for yourself, Benito Diaz and Juan
Castañeda?

Answer. I do not know

10th Question. How long before
you saw said title, did you know of applica-
tion having been made to the Governor for
said grant?

Answer. I do not recollect how
long I knew of it, but I knew of it in San
José before I went to Los Angeles. Juan
Castañeda was there at San José and told
me of such application being made before
I went down.

11th Question. Was anything paid
to Pio Pico for his giving the title to the Orchard

to Pio Pico for his giving the title to the Dick and
#1 of Santa Clara, if you, what was paid?
Answer. I gave him 200 head of
cattle, and I received back \$300. in change
this was in full payment for the said
title, that was my share, I do not know
anything about the other payments.

12th. Question

When were you to
whom were those cattle delivered?

Answer. They were delivered
at Pio Pico's ranch of Santa Margarita
this side of San Luis Rey, the precise
I do not recollect. The way of it was this,
Juan Castaneda had 400 or 500 head of
cattle there already on said Pico's ranch,
and he sold me the 200 head, for the
purpose of enabling me to pay my part,
and the way I made my payment, I delivered
to Pio Pico a writing which showed
that I made my part of the payment
with the said 200 head of the cattle
of Castaneda which were there on the ranch

13th. Question.

When you first
delivered those cattle to Pio Pico was there
anything said about the Rancho of San
Luis Rey in connection with said delivery
of you, what was said?

Answer. There was
nothing said about San Luis Rey.

14th. Question. Have you ever
any communication with Governor Pico about
his wanting to give the rancho of Palms
or that of San Luis Rey, if you, when
was it, and what was said?

Answer. I have a communication
with him about the purchase of Palms

but he did not wish to sell it to me. I do not remember the time, but I think it was after the sale to us of the Orchard in question.

13th Question. How the cattle you have spoken of, delivered to Pico in part payment for a title to either the Pulco Rancho or San Luis Rey Rancho, under the expectation on your part that a title to one of them would be obtained from Santa Gertruda?

These cattle were only delivered in payment for the Orchard of Santa Gertruda and San Jose.

15th Question. Do you recollect when Gen. Vallejo was taken prisoner by the Americans at Sonoma in 1846, if you, where were you and how engaged at the time.

Answer. I recollect that event, I was in San Jose, occupied with my private affairs.

17th Question. Who was Juan Castorena at that time?

Answer. He was in Santa Clara I think, with Gen. Castro.

18th Question. How long after that was it that you first saw Castorena in Los Angeles?

Answer. It was the next day after I heard of "Vallejo's" being taken prisoner that I started to Los Angeles, and a little while after my arrival in Los Angeles I met Castorena there.

19th Question. When was Los Angeles first taken by the Americans?

Answer. I cannot remember the

time; I saw Commodore Stockton there, and was introduced to him, on the day he arrived there and also to Gen. Kearny.

20th Question. How long has the town of Los Angeles been in the possession of the Americans before Stockton arrived there?

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Answer. I do not recollect whether it was taken before Stockton came there or not: I was there present when the town was taken and recollect the event, but I do not know the particulars now, about the dates. It was the second time Los Angeles was taken that I was introduced to Commodore Stockton.

21st Question. Did you reside in Los Angeles in August 1846, and was you there in the town, the first time it was taken by the Americans?

Answer. I do not recollect whether I was there in August 1846, but I was there when the town was first taken -

22nd Question. Was Benito Diaz present when Castaneda first showed you the same title?

Answer. I do not remember.

23rd Question. Did you see Benito Diaz or Pio Pico on that day?

Answer. I saw them there nearly every day, but cannot say whether I saw them on that day.

24th Question. Did you remain at your residence in Los Angeles after the Americans took the place?

Answer. I did. I never left

my home.

25th. December. Was it before or after the Americans first took Los Angeles, that Castineira first showed you the said title?

(This deposition is here suspended for the present on account of the illness of the witness. I will commence)

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January 9. 1855.

The witness again appears and resumes his deposition.

Answer. 25th December. It was before the Americans first took Los Angeles, that Arenas showed me the paper, I do not remember how long before.

26th December. What were you when Governor Pio Pico started from Los Angeles with an armed force to fight Gen. Castro?

Answer. I do not remember where I was then. I heard the event spoken of but I was not at Los Angeles.

27th December. Were you ever at Los Angeles when you went there from San José?

Answer. I do not remember whether it was before or after my said arrival, my memory is weak.

28th December. Where did the forces of Castro and Pico meet?

Answer. I do not know.

29th December. Do you know what brought about a reconciliation between

Saca Castro and Pico, if you, what was it?

Answer. I do not know what reconciled them.

30th Question. When you heard of Pico's Expedition against Castro had you not yourself a letter from Pio Pico of the Rancho of Pala or for the Mexican of San Luis Rey?

Answer. I never had a letter to either of those places, I once tried to buy "Pala" from Pio Pico but did not succeed.

31st Question. What was your when you tried to buy Saca Rancho of Pala?

Answer. I was in Los Angeles.

32d. Question. What did you offer Pio Pico for Saca "Pala"

Answer. I made him no specific offer. I proposed to buy it, but he refused to sell it.

33rd Question. How long had you been absent from Los Angeles, when you went down there from San Jose, at the time the Americans took Sonoma?

Answer. I do not know how long it was, though it was most likely a short time.

34th. Question. Who was present when you applied to Pico for the Rancho of Pala?

Answer. I do not remember whether any one was present.

35th. Question. At the time that you applied to Pico to buy "Pala" were the 200 head of cattle of which you have spoken, then in the possession of Pio Pico?

Answer. Yes they read in his possession before he read Governor, and I applied to him to buy "Pala" which he read Governor.

36th. Question. Were those same 300 head of Cattle, the ones you offered him for Pala?

(36th Question objected to by counsel)

Answer. No, I did not offer him the Cattle for "Pala"

37th. Question. What did you offer him for "Pala"?

Answer. I have already said, I made him no offer.

38th. Question. How long did Pio Pico keep the said 300 head of Cattle after the sale of said Orchard?

Answer. He still has the Cattle now.

39th. Question. In your answer to 11th Question, herein you state that haste never told you at San Jose of his application for said Orchard, now state all that he said to you about it on that occasion?

Answer. Custodia told me that would be a good time to petition for the said Orchard, and he said that he had Cattle in possession of Pio Pico, that is about the substance of what passed between us upon the subject.

40th. Question. Was any person ever threatened you with personal violence if you testified in this case, if you, who made such threats?

Answer. No person has ever

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threatened me with personal violence with
regard to my testifying in this case, but
I have been told that I was bound
to testify.

11th Question. Who was in pos-
session of the Orchard of Santa Clara during
the year 1846, and state whether either of
the said grantees you have mentioned ever
had possession of it?

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Answer. I suppose Padre Real
had possession of it in 1846, he was there, and
I know he had possession of it when I deman-
ded the possession, but I do not remember
when that was, I never had possession of it
myself. I applied to Padre Real for it and
he refused it, and I do not know whether
Lies or Castorena ever had possession of it.
I complained to Gen. Mason of my being
refused the possession, this was at Monterey,
Gen. Mason said he had no authority over
the matter and that if the Padre did not
choose to give it to me, he (Mason) could
not interfere in the matter.

12th Question. How did you
dispose of your share in said Orchard?

Answer. I gave one Jones (an
American) a full power of attorney to sell it,
and pay my debts.

13th Question. How did you
all of them get possession of your said
share in the Orchard?

Answer. I do not know how
he got it.

14th Question. When Castorena
showed you the title of the Orchard
of Santa Clara, did he show you any other
title made about that time, if you, what

Other titles?

Answer. I do not remember that he showed me any other titles.

15th Question. Do you know of any other title having been made about that time?

Answer. I do not.

Group Examined by Judge Thornton's Examinations

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1st Question. Was the deed of sale made by Dico of this Orchard to yourself, Castenea and Diaz, made or written in your house?

Answer. It was not made or written in my house; of such thing was done I was ignorant of it, I was ignorant of any such thing, and would not if I knew it suffer anything of that kind to be done in my house.

2nd Question. If Castenea, Diaz and Governor Dico, had been engaged in your house, in making, or writing, and signing this title or any other titles, would you not have known of your house being put to this use?

Answer. I am entirely ignorant of anything of the kind having transpired at my house, and now for the first time have come to hear of such a thing, and I believe it could not have occurred without my knowing it. I am an honest man, and allow no such things to be done in my house.

3rd Question. Did you stand you to say in your Examination in Chief herein, that Castenea brought

the deed of sale such as it is.

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the deed of sale further ordered, after
it was fully made and executed, and
showed it to you, being the first time
you saw it.

Answer. Upon the first time I
ever saw it Castenedas brought it to my
house in Los Angeles and delivered it
to me. It was then complete, duly executed
and written.

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4th Question. At whose instance
do you come to testify in this case?

Answer. Jose Noriega request
me to come, and told me it was at
the instance of the Deceit.

5th Question. Had any one
ever offer to buy you, or did any one ever
use influence with you to testify improper-
ly, or what was not true in this case, if
you, state who, and all about it?

Answer. Jose Noriega request
me to come and testify in this case
on behalf of the Deceit, I told him I was
very much engaged and could not come,
that I could not leave my family and
go away and neglect my private affairs
He then offered me \$100 if I would
come. I refused and then I told him if he
would pay my expenses and give me
\$500 so as to leave some money for the
use of my family in my absence and
remunerate me for the time and I would
I would come. He complied with these
terms, paid the money and I came. But
I do not consider that I was bought
or bribed, or that Noriega had any
intention to buy or bribe me to testify one way
or another in the case.

6th Question. Since you have been in San Francisco, have you not been asked if you would not testify to things in this case, which you stated to the jurymen causing you to swear, that you would not testify to?

Answer.

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Since I came here I have not been solicited to swear any way improperly. On my arrival here James Robles invited me to his house. I went and he then asked me what I knew about this case, and what I would testify to. I told him I had not come there to capitulate but that when I should appear as a witness before the Commission, he would learn what my testimony would be. The Judge told me he only wished me to testify to that which was true, and nothing that was not true. I told him I was an honest man and should certainly do so. Mr. Clayton the gentleman who is now present was present when the Judge invited me to his house.

7th Question. When you left San Jose for Los Angeles in 1836 at the time you speak of the Americans taking Sonoma, do you not mean to refer to the raising of the "Bear Flag" and the imprisonment of Gen. Vallejo?

Answer. I understand Sonoma was taken and that they were all taken prisoners up there by the Americans and the next day I left San Jose for Los Angeles

Re-examined by U. S. Law Agent

8th Question. How many rooms were there in your house at Los Angeles?

Answer. Five

2^d Question. Were Juan Casteneda and Benito Liary often at your house in Los Angeles about the time the Americans took possession of the Country?

Answer. Casteneda and Liary visited my house about that period. Casteneda lived at my house after he showed me said letter to the Orchard he had just arrived there from above when he showed me said letter.

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3^d Question. Who went down to Los Angeles with Casteneda?

Answer. I do not remember.

4th Question. What hour of the day did Casteneda arrive in Los Angeles?

Answer. I do not know.

5th Question. Where did he stay the first night, in Los Angeles.

Answer. At my house

6th Question. How many days after the arrival of Casteneda at Los Angeles was it that it that he showed you said letter?

Answer. I do not remember how many days it was. It was shortly after he arrived there. I might have owed more days.

7th Question. When Noriega agreed to give you the \$500. had he the money with him or did he borrow it?

Answer. He sent to a Padre at Santa Barbara for \$400. he had \$100. in his pocket, he gave me the \$500.

Guies Arenas
his uncle

Filed in office
Jan'y 9. 1855
Geo. Fisher

Secy Sales & Co. and sworn to before me on the 9th day of January A.D. 1855. Peter Gott, Commissioner

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Pío Pío Gobernador constitucional del
Departamento de California.

(Seal)

Autorizado previamente

por la Excm. Asamblea Departamental para la
enajenación de las Abieiones afin de evitar la
entera ruina de ellas y proporcionar al Gob

Orchard of St. Clara. icsu recursos que de pronto necesita para
atender a sus urgencias, y en vista de la

402 ND

PAGE 52

Solicitud de los ciudadanos Juan Castañeda
Luis Arenas y Benito Dias en que piden

Exhibit B. S. 1 comprar la huerta de arboles frutales de la
annexed to Deposition Abieion de Santa Clara con la casa que le
of. Antonio M. Pico. Son arcezas, ubicada al frente del estable

-cimiento: usando de las facultades que me
hallo investido por el Supremo Gobierno nacio
nal y decreti de la espresada Honorable As.

Title.

-amblea de 13 de Abril ultimo, es venido
en hacer venta y enajenacion perpetua de
la espresada huerta a los referidos Sres.

Juan Castañeda, Luis Arenas y Benito Dias
en la cantidad de mil ochocientos pesos q. han
pagado y recibido este Gobierno a su satisfacion
de conformidad con abalio que de ella hizo la

Comision de Abieiones: el que he tenido a bien
mandar por el decreto en que actualmente
se halla la referida huerta: Y para la debida

constancia en todos tiempos doy este documento
como en formal escritura que sera recurrida
y acatada por todas las autoridades civiles

y Militares de la nacion en este y en los demas
Departamentos y aun por el Gobierno general
autorizada debidamente con mi firma y la
del Secretario de mi despacho.

En consecuencia mando que
teniendo el presente titulo por firme y valido
se tome raxon de el en el libro q. corresponden

y se entregue a los interesados para su resguardo y usos que le convenga. El Juez respectivo en vista de este titulo los pondra en posesion de la mencionada buerta, de que les hara formal entrega el encargado del establecimiento a quien se librara orden al efecto. Dado en la ciudad de los Angeles en papel comun por falta de sellado a los treinta dias del mes de Junio de mil ochocientos cuarenta y seis.

Pio Pico.

Jose Matthias Moreno.

Srio. Int^o.

Queda tomada razon de este Superior Despacho en el libro respectivo.

Moreno.

Exhibit A produced and exhibited to ant. M. Pico upon his examination as a witness before me on the 23^d day of October 1852.

William L. Smith.

Notary Public.

Philip A. Borch.

Deed of Overlands. San Jose & Santa Clara.

A

Marked A as an exhibit upon taking the testimony of Jas. Alex. Forbes and Antonio Maria Pico. June. 25. 1852.

William L. Smith.

Notary Public.

Recorded in the Book of Records B. of the Municipality of Monterrey. page 30.th March. 2.nd 1850.

W^m L. Johnson.

acting Recorder's Clerk.

In new Book of records page 30. n^o 37. Abugo Berd.

Filed in office. March. 3.^d 1853.

Geo. Fisher. Secy.

Translation of Pio Pico Constitutional Governor of the Department of the Californias.

Title.

"C." Also of Govt Seal.

Grant A.

"B."

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Having been previously authorized by the Most Excellent Departmental Assembly to delineate the Missions, in order to avoid their total ruin, and to provide for the Government means which it wants immediately in order to attend to its urgent necessities, and in view of the petition of citizens Juan Casteneda, Luis Arenas, and Benito Diaz, in which they propose to purchase the garden of fruit trees of the Mission of Santa Clara with the houses pertaining to it, situated in the Westere by the Supreme Government of the Nation and the decree of the Aforesaid Honorable Assembly of the 13th of April last, I have made sale and perpetual alienation of the aforesaid garden to the said Señores Juan Casteneda, Luis Arenas, and Benito Diaz, for the sum of one thousand and two hundred dollars, which they have paid and this Government received to its satisfaction, in conformity with the resolution of it, made by the Committee on Missions; which I have thought proper to diminish, on account of the bad condition in which the aforesaid garden actually is. And that it may duly appear in all times I give this document as a formal deed which will be recognized and respected by all the Authorities Civil and Military, of the Nation in this and the other Departments, and even by the General Government duly authenticated with my signature and

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that of the Secretary of my Office

In consequence I order that the present title being held as form and valid Note be made of it in the Corresponding Book, and it be delivered to the persons interested for their security and other purposes which they may see fit.

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The proper Magistrate in view of this title, will put them in possession of the aforesaid ~~proceedings~~ ~~garcion~~, of which the person in charge of the Establishment will make formal delivery to them, to whom orders to that effect will be issued.

Given in the City of Los Angeles, on Common paper for want of stamped, on the thirtieth day of the month of June one thousand eight hundred forty six.

(Signed) Pio Pico

(Signed) Jose Matias Moreno

Secretary de Intero

Note has been taken of this Superior Dispatch in the respective Book

(Signed) Moreno

Filed in Office March 3rd 1853

Geo. Fisher

Secy

2. 57

Cuenta de lo que los Sres. D. Juan Castañeda
D. Luis Arenas, y D. Benito Dias, fueritaren al Gob.
Departamental en paga de las huertas de Sta.
Clara y S^a José por la compra que de ellas hicieron.

	"	"	"	
200	Peses	à 5 p. ^s	1000.	"
30	Carallos.	à 12 p. ^s	360.	"
180	enerros.	à 2 p. ^s	360.	"
100	à de harina	à 2 p. ^s	200.	"
125	faneg. ^s mais	à 12 r. ^s	187.4	"
50	Idem. frijol.	à 3 p. ^s	150.	"
	En plata		952.4	"
	Suma.		3200.	"

Receipt.

Exhibit. D. N^o: 2.
annexed to Deposition
of
Antonio M. Pico.

{ Sello del
Gobierno. }

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Cuya Suma recibio este Gobierno
à su satisfacion. Y para constancia y resguardo
de los interesados doy el presente en la Ciudad
de los Angeles. a 3 de Julio de 1856.
Pico.

Book of paying Governm^t fr. Santa Clara and
San José orchard.

B

marked B at the time the depositions of Jas. Allen
Forbes & Ant^o M. Pico were taken by me. June
25. 1854.

William L. Smith.

Notary Public.

Phelps Ranch.

Recorded in the book of records B. of the Municipality
of Abousterrey. p. 31. March 2nd 1850.

W^m L. Johnson.

Acting Records Clerk.

Filed in Office.
March. 3^d 1855.

Geo. Fisher.
Secy.

In new book of records page 31.

n^o 39.

Hugo Bevil.

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1

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 Translation of Account of the articles which Señores
 Juan Castañeda, Luis Arenas, and Donato
 Diaz furnished to the Departmental
 Government, in payment of the Surcuns
 of Santa Clara and San Jose, for the
 purchase which they made of them.

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200 heads of Cattle @ \$5. ea	\$ 1.000—
30 Horses " " 12 "	360—
180 Horses " " 2 "	360—
100 Anobas Fleas " " 3 per Anobas	300—
129 Fanegas Maiz " " 1.50 " Fan"	187.50
50 " " Frijol " " 3.00 " "	150 "
In Cash	942.50
Amount	\$ 3.200.00

Govt Seal Which said this Government
 received to its satisfaction and
 in testimony, and for the security of those
 interested I give this present in the city
 of Los Angeles, on the 2^o of July 1846
 (Signed) Pico

I certify the foregoing to be a true and
 correct translation.
 Geo. Fisher Secy

Filed in Office March 3^o 1853
 Geo. Fisher Secy

742. J. W. Redman. claimant.

W. S. Board of Land Commission.

Affidavit of
Benito Diaz.

Benito Diaz says on oath that he has examined the grant filed in this case bearing date June 30th 1846 and the receipt dated July 2^d 1846 each signed by Pio former Governor of California that he was present at the signing of said document, that they were written by Juan Castaneda at the house of Luis Arenas in the month of August 1846, about eight days before Commodore Stockton entered Los Angeles. That affiant was not present at the signing of said documents. That he saw them the same day they were written and after they were signed. That they were signed on the day they were written, that no money was paid for said title by the grantee and it was the understanding that no money should be paid if the Americans retained possession of the country.

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Subscribed and sworn Benito Diaz.
to before me this 4th
day of December 1854.

Alphons Felch.
Commissioner.

Filed in Office Dec. 6. 1854

Geo. Fisher.
Deputy

Exhibito
n.º 3.

Por el presente poder amplio y bastante, al Sr. D. Thomas O. Larkin para que tome posesion de las huertas de Sta. Catalina y S. Jose que hemos comprado legalmente al Gobierno de el Departamento como consta de las Escrituras que con esta fha. entregamos a dho. Sr para en constancia y que haga el uso que combenga a ambas partes.

Monterey Aho 27 de 1846.
J. de Castaneda. Benito Diaz

Filed in Office July 25. 1854
Geo. Fisher
Secy.

No. 742. J. W. Redman, et al. Claimants, and
 No. 754. J. O. Searkin. Claimant -
 Both for the orchard of Santa Clara -

Before the U. S. Board of Land Commissioners -

Affidavit.

J. H. McKune, U. S. Land Agent and
 Lewis Blanding, U. S. Associate Land Agent each
 for himself, swear on oath that when the above styled
 cases were submitted to this Board for adjudication
 he did not know of the existence of the facts stated
 in the affidavits of Benito Diaz and J. Alexander
 Forbes filed herein and only learned them about
 the date of affidavits, and that if these cases shall
 be restored to the docket for further testimony he
 expects to procure the evidence stated in said affi-
 davits and introduce it in said cases -

J. H. McKune.

Lewis Blanding.

Subscribed and sworn to
 before me, by both of said
 affiants, at San Francisco
 on this 6th day of December A. D. 1854.

Peter Scott. Commissioner &c

Filed in Office Dec. 6. 1854

Geo. Fisher. Secy.

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Translation of
"Exhibit No. 3"

By these presents we give ample and
and sufficient power to Señor Don Thomas
A. Surkin to take possession of the orchards
of Santa Clara and San José which we
have legally purchased of the Government
of the Department as appears from the
decrees which we of this date (a herewith)
address to the said Señor for his security
and that he may do what may be for
the interest of both parties.

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Monterey Sept. 27th. 1846
(Signed) Benito Diaz

(Signed) J. de Castañeda

Filed in Office July 25. 1854
Geo. Fisher Secy

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Nos 742 + 754.

J. W. Redman, et al. vs
J. V. Leaskin

It is hereby moved that the cases 742 + 754 which
Action of W. S. have been submitted to the Board be returned to the
Asso. Law Agent docket and opened that new and additional testimony
may be taken on the part of the Government.

Levin Blanding.

Nov. 28. 1854.

Asso. Law Agent.

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Filed in Office Nov. 28. 1854.

Geo. Fisher Secy.

Affidavit of No 742. J. W. Redman, defendant -
Alex Forbes.

A. P. S. Exhibit Alexander Forbes being duly sworn deposes and says;
to dep. of Jas. that he was well acquainted with Pio Pico during the
A. Forbes Dec. year 1846, that said Pico acting Governor of California
28. 1854. during that year was at Santa Barbara in Cali-

fornia on the 30th day of June 1846, and that said Pico
remained at Santa Barbara without leaving said
place till the 3rd day of July 1846. That he believes
said Pico left Los Angeles for Santa Barbara on
the 17th day of June 1846, and did not return to
Los Angeles till after the 3rd day of July 1846.
Jas. Alex. Forbes.

Subscribed and sworn to
before me this 27th day
of November 1854.

Alphons Felch.

Commissioner.

Filed in Office Nov. 28. 1854.

Geo. Fisher Secy.

Exhibit
No. 4.

Obligation
to sell two
Orchards.

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Todos los q. los presentes vieren
sabido, y los q. abajo firmamos nos
comprometemos a vender a D. Tomas
O. Larkin la parte de las huertas
de Santa Clara y S. Jose, y nos
pertenece por la compra que ellas
hicimos al Gobierno del Departamento
como consta de las respectivas
Escrituras y en esta fecha entregamos
al expresado Sr. Larkin, siendo las
condiciones de la venta las siguientes:
a saber, que dentro de dos meses
contados desde esta fecha si se veri-
fica la venta, el Sr. Larkin nos dara
dos mil y quinientos pesos en plata; y
en caso de no convenirlo, quedara el
contrato sin efecto, desolvien do las
expresadas Escrituras. Por tanto, si
dentro del tiempo mencionado, faltare
mos a lo estipulado en el presente
documento; nos obligamos a satisfacer
al referido Sr. Larkin, los perjuicios
y por la falta de cumplimiento
nos haga de cargo. Y para que
conste lo firmamos en el Puerto de
Monterey a 27 de Set de 1846.

Benito Diaz
y de Castañeda

Filed in Office July 25. 1854
Geo. Fisher
Secy.

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Translation of
"Exhibit No 4."

Know all to whom these presents may
Come, that we the undersigned agree to
sell to Don. Thomas O Larkin the part
of the Orchards of Santa Clara and San
Jose which belong to us by the purchase
which we have made of the Government
of the Department as appears by the
respective writings which of this date
(or here with) we deliver to the aforesaid
Don Larkin, the Conditions of the Sale
being as follows, that is to say: That
within two months counted from this
date, if the Sale between us takes place
the Don Larkin will pay us twenty five
thousand Dollars in Silver, and in case
it does not suit him, the Contract
shall remain without Effect he returning
to us the aforesaid writings -

Therefore if within the time mentioned, we
should make default in the Contract
in the present Document, we oblig our
Selves to make good to the aforesaid
Don Larkin the Damages arising to him
from our default.

In Witness whereof we
have into see our hands in the Port of
Monterey on the 27th of Sept. 1846

Signes Benito Diaz

Signes J. de Castaneda

Filed in Office July 25. 1854

Geo. Fisher Secy

Exhibit No. 5.

En el pueblo de Monterey de la Alta California, a los once dias del mes marzo de mil ochocientos cuarenta y siete: ante mi

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Walter Cotton, primer magistrado de este lugar, comparecieron D. Juan Castañeda y D. Benito Diaz, vecinos de este lugar y dijeron: Que por si y a nombre de sus herederos y sucesores y de quien ellos hubiere titulo voz y voto en cualquiera manera, venden a D. Tomas O. Larkin el derecho que tienen a las terceras partes de la huerta de arboles frutales de la Misión de Santa Clara con las casas que le son anexas, ubicada al frente de el establecimiento, como consta del titulo que les expidió el E. S. Gobernador del Departamento y entregan al expresado Señor Larkin con la orden para la entrega, en la cantidad de mil pesos en plata acuñada que tienen recibidos a su satisfacción. En consecuencia ceden a favor del referido Señor Larkin y de sus herederos y sucesores los derechos de dominio, propiedad, posesion y cualquiera otra que le compete, renunciando las leyes a su favor y defina y la general de el derecho en toda forma; declarando al Sr. Larkin por si y a nombre de sus herederos y sucesores legitimos, dueño de las partes que le han vendido y que disfrutaria quieta y pacificamente, sin que en ningun tiempo sea molestado, pues reiteran la renuncia al derecho que les corresponde; y si en cualquiera tiempo hiciere qualquiera persona cualquiera especie de reclamo por las citadas partes se comprometen por si y a nombre de sus herederos y sucesores a salir en todo tiempo a la defensa del Sr. Larkin y de sus herederos y sucesores ante los tribunales competentes, hasta dejarlo en pacifica posesion de las partes de el terreno que le han concedido; obligandose a su cumplimiento con sus bienes habidos y por haber en cuya firmeza conunjo y los testigos de asistencia.

J. de Castañeda
Benito Diaz

Jorge Allen
James Stokes.

= Diaz & Castañeda. Deed to Thomas O. Larkin
(For acknowledgment - Filed 5:00 o'clock P.M. 20th Aug AD. 1851 - J. T. Richardson Recorder - Recorded in Book of Deeds B. pag 419 et 5^{to} hereof)
Filed in Office July 25, 1854 = Geo. Fisher, Records of the Municipality of Monterey page 33 - March 2, 1850 = Wm. John Secy. son Act 3 Record 3rd = In new Book of Records page 33 No. 44. Paid. Wm. John

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Translation of
"Exhibit No 5"

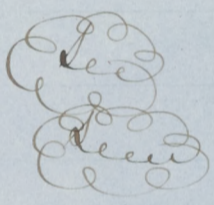
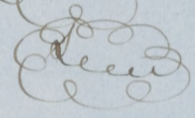
In the Port of Monterey of Upper Calif
ornia on this Eleventh day of the month
of March One thousand Eight hundred
and forty seven, before me Walter Colton
Just Magistrate of this place appeared
Don Juan Castaneda and Don Benito
Lizay residents of this place and deposed;

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That in their name and in that
of their heirs and Successors and in that
of any persons whomsoever, whose right,
title and Authority succeed in them be
past or to come, they do sell unto Don Thomas A
Larkin the right which they have to two
third parts of the Orchard of Fruit
trees of the Mission of Santa Clara and
with the houses appertaining thereto situate
at present in front of the Establishment as
appears by the Title which was delivered
to them by his Excellency the Governor of
the Department, which they pay over to
the said Don Larkin with the Order of
its delivery in consecration of the sum of
one quantity of One thousand stamped
Silver Dollars which they have received
to their satisfaction: In consequence thereof
they cease unto the said Don Larkin his
heirs and Successors their rights of American
Ownership, possession and any other which
may be recorded in them, renouncing the
Succes in their favor and defend and
their entire right in deed form declaring
Don Larkin for themselves and in the
name of their heirs & Successors legitimate,
the owner of the property which they have
sold him, and which he will enjoy
quietly and peacefully without at anytime

being molested, for they reiterate their renou-
 cement to all the rights which belong to
 them - And if at any time whatsoever any
 person should buy any species of claim
 whatsoever to the said property they (the
 said vendors) hereby bind themselves in
 their ^{own} name, and in that of their heirs
 & Successors to Come forth in the defense
 of said Larkin thro' his Successors
 before the Competent tribunals until he be
 left in the peaceful possession of those
 parts of the Land which they have sold
 to him, binding themselves to its full
 discharge with all the property which
 they now have or may acquire;

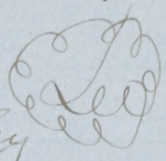
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In witness whereof they have hereunto
 set their hands with one and the
 assisting witnesses
 (Signed) J de Castaneda 
 (") Benito Diaz 
 (Signed) Jorge Allen. James Stokes

(English in
 Original)

The foregoing document being sealed signed
 & delivered in my office and in my pres-
 ence, and a record of the same taken &
 kept in this office on this twenty first day
 of March A.D. 1847.

In testimony whereof
 I hereunto set my hand and seal the
 above date - twenty first day of March
 1847 -

(Signed) Walter Colton 
 Alcalde de Monterey
 Signed William R Gann Secretary

Filed in office July 25. 1854
 Geo. Fisher Secy

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754

Exhibit
no 6.

x x x x x

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x x x x x

x x x x x

x x x x x

x x x x x

x x x x x

x x x x x

Sesi =

on del 8 de Julio de 1846

Leida y aprobada la acta de la ant^{on} manifest^o el Sr. Preste haber pasado ya al Gobierno Departam^t, copia del dictamen aprobado en la Sesion extraord^a de ayer, relativo a colonizacion conforme se sirvio acordar lo esta Y Asamblea.

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x x x x x

x x x x x

x x x x x

x x x x x

Y no habiendo otra cosa que tratarse levanto la Sesion.

Pio Pico
Preste

Agustin Olvera.

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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 in my Office and
in my charge and custody a portion
of the Archives of the former Spanish
and Mexican Territory or Department
of Upper California, by virtue of the
power vested in me by law, Do hereby
certify, that the two preceding, and hereto
annexed pages of tracing paper numbered
1 & 2 exhibit a true and accurate
copy of Extracts from a certain
Book, entitled: "1846 - Cuaderno,"
de Sesiones de la Excm^a. Asamblea
purporting to be a Record of proceedings
of the Departmental Assembly, and now
on file and forming part of the said
Archives in this Office.

In testimony whereof, I
have hereto signed my
name officially and caused
the Seal of Office to be
affixed, at the City of
San Francisco this Twenty
second day of August
1855.

J. C. Hays

John C. Hays
U. S. Surveyor General
for California.

Filed in Office September 8th 1855.
Geo. Fisher
Clerk.

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Translation of
"Exhibit No. 6"

Session of the 8th day of July 1856

The Minutes of the former Session having been read and approved the President manifested that he had already passed to the Departmental Government a copy of the opinion approved in the Extraordinary Session of yesterday relative to colonization; Conformably this Honorable Assembly approved its approval.

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x	x	x	x	x	x	x	x	x
x	x	x	x	x	x	x	x	x
x	x	x	x	x	x	x	x	x

There being no other business to treat of, the Session ended

(Signed) Pio Pico
President

Augustin Obena
Deputy Secretary

Filed in Office Sept. 8. 1855

Geo. Fisher Secy

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Stipulation

United States Land Commission
for California

Thomas A. Larkin, Plaintiff

vs
The United States ^{of the Orchard} ^{of the Mission of}
Santa Clara

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It is hereby stipulated and agreed that the signatures of Juan de Castaneda and Benito Diaz upon the documents marked "Exhibit No 3" and "Exhibit No 4" filed herein and also the signatures of Juan de Castaneda, Benito Diaz, Jago Allen, James Stokes, Matta Colton and William R. Gurner wherever they appear in and upon the Document (a conveyance from Juan de Castaneda & Diaz to Thomas A. Larkin) marked "Exhibit No 5" and filed herein shall be held and considered true and genuine. And it is also further stipulated & agreed that the depositions of Augustine Recman and Antonio M. Pico taken in case No 742 on the docket of this Commission together with the documents referred to in the latter deposition, and marked "Exhibit B" and "Exhibit D" may be considered in this case No 754, and that all the said documents, depositions & Exhibits may be read and used in evidence in and upon the hearing of the above entitled cause in all its stages with like effect as though the signatures were legally & duly procured, and the said depositions, together with the said Exhibits had been duly taken & filed.

in this Cause Number, Seven hundred and
fifty four.

San Francisco July 25th 1854

James Blumenthal
U. S. Asst. Secy Agent
A. C. Whitcomb
Attorney for Blumenthal

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Filed in Office July 25. 1854

Geo. Fisher Secy

U. S. Land Commission for California
Thomas A. Larkin

The United States } Claim for encroached
} Trees & vines of the Orchard
} of the Mission of Santa Clara

It is hereby stipulated and agreed that
the depositions of Don Benito Aliaz, Don
Seas Arenas, Don Jose Castro and J. A.
Forbes taken in Case No. 742 on the
Docket of this Commission may be received in
evidence in & upon the hearing of this
Cause before this Commission only -
Nothing in this stipulation to be construed
as admitting the truth of any statements
made in said depositions
April 3rd 1855.

J. S. McKean
U. S. Secy Agent
A. C. Whitcomb
Atty for Blumenthal

Filed in Office April 3. 1855

Geo. Fisher
Secy

Stipulation

U. S. Lance Comissioner for California

Thomas A. Larkin & Belmont for and
 The United States ^{vs} of the Archives of the
 Mission of Santa Blanca

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It is hereby stipulated and agreed that
 a document marked "Exhibit No 6"
 being a true copy from the Office
 of the Secretary General of the United
 States for the State of California of
 portions of a certain Book making a
 part of the Archives now in his Office
 may be filed in this case - Number
 seven hundred and fifty four (754)
 and admitted as evidence herein in
 all stages without further proof.

San Francisco September 3rd 1855

Louis Blanning
 Asst. Secy Agent
 A. G. Whitecomb
 Counsel for Belmont

Filed in Office Sept. 8 - 1855

Geo. Fisher

Secy

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Opinion of Thomas A Larkin } Part of the Orchard of
 Board by }
 Comr. Thompson } The United States } Santa Clara.

This is a claim for a portion of the Land for which a Confirmation was asked in Case No 742. J M Reaman vs. The United States, and purports to be founded on the same Original title, the validity of which was considered and decided in the Opinion of the Board delivered in that Case.

In accordance with the views contained in that Opinion this claim must be rejected and a decree will be entered in conformity therewith

Filed in office Dec. 18. 1855

Geo. Fishw Secy

Decree

Thomas A Larkin }
 vs }
 The United States }

In this case on hearing the proofs and allegations it is adjudged 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

Alpheus Felch }

R. Aug Thompson }

Filed in office Dec 18, 1855

Geo. Fishw Secy

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And it appearing to the satisfaction of the Board that the land hereby adjudicated is situated in the Northern District of California It is hereby ordered that two Transcripts of the proceedings and 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 shall be filed with the Clerk of the District Court of the United States for the Northern judicial 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
Board of Commissioners to ascertain and settle the Private
Land Claims in the State of California, do hereby certify the
foregoing *Eighty two* — pages, numbered from
1 to 82, 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. 754 on the Docket of the said Board,
herein

Thomas M. Larkin is —
the Claimant against the United States, for the place known by
the name of "Part of the Orchard of Santa Clara."

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

Geo. Fisher.

402 402

U. S. DISTRICT COURT,

Northern District of California.

No. ~~402~~ 402

THE UNITED STATES,

vs.

MD

Thomas O. Leaskin

TRANSCRIPT OF THE RECORD

FROM THE

BOARD OF U. S. LAND COMMISSIONERS.

In Case No.

754

Filed

February 6 185*6*

J. D. Monroe,
Clerk

No. 402.

District Court of the United States, in
and for the Northern District of California

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Thomas O. Sarkin, } Appellant and Claimant
 } for two thirds of the Orchard
The United States } of the Mission of Santa Clara
Appellees - } an appeal from U.S. Land Commissioner's
 } Notice is hereby given

that the above named Claimant intends to
prosecute the Appeal taken in the above-enti-
-tled cause from the decision-against the
said Claimant-of the Board of United States
Land Commissioners for ascertaining and
settling the private land claims in the State
of California; the appeal being to the said
District Court, and the land claimed being
in the said Northern District. The said
cause was numbered Seven hundred and fifty
four on the Docket of the said U.S. Land Com-
-missioners, and is numbered four hundred
and two on the Docket of this Court, in which
Court a Transcript of the proceedings and
decision of said Commissioners and of the
papers and evidence on which the same
were founded, was filed on the sixth (6th) day
of February A.D. 1856. —

Dated at San Francisco this 20th day of March 1856.

A. W. Whicomby
Counsel for Claimant & Appellant

District Court of the
United States for the
Southern District of California

No. 402

Thomas O. Larkin
Appellant & Claimant

vs.

The United States

Notice of Appeal

Filed March 20th. 1876,
by Charles
DePinto,

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A. A. Whitcomb
Counsel for Claimant & Appellant

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

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The United States } No. 402 -
Thomas Larkin }
claimant & appellant } 2/3 of Orchard of Santa Clara

The United States by their Attorney
deny the validity of the title set out in the
petition of the said Appellant, and pray
that the decision of the Board of Commissioners
be affirmed and that the said title be deemed
to be invalid.

A. G. Russell,
Acting U.S. Dist. Atty.

April 21st 1854

U.S. District Court
Northern District of California

No 402

The United States

vs

Thomas D. Larkin

Answer

Filed April 30, 1886

Cherwell
Deputy

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A. G. Russell

UNITED STATES DISTRICT COURT,
Northern District of California.

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The United States

San Francisco, April 29th 1856

vs
Thomas O. Larkin

ON this day, before me *Geo. Pen. Johnston* a
Commissioner of the United States for the ~~Northern~~ Districts of California, duly
authorized to administer oaths, &c., &c., ^{by special order of said court} came, *José Mattias*

Morano _____ a witness produced on behalf of the
Claimant _____

in Case No. 402, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 754 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows — his evidence being interpreted by *E. C. Palmer* _____ a sworn interpreter

PRESENT:

The Acting U. S. Dist Attorney on behalf of the United States, and A. C. Whitcomb on behalf of the Claimant.

1st QUESTION BY

The Atty for Claimant. — "What is your name age, and place of residence?"

Ans. 1. — "My name is *José Mattias Morano* — I am thirty seven years of age — and I reside at *San Diego California*."

Ques. 2. — "Where were you on the 30th day of June 1846 — and what office did you then hold under the Mexican Government, if any?"

Ans. 2. — "I was in *Santa Barbara California* at that time, I was then Secretary of the Government of the State "ad interim" under *Pío Pico* then Governor of California."

Ques. 3. - "Look on the original documents from the office of the Surveyor General of the U. S. for the State of California, marked "title" and "receipt," filed in Case No., 742 before the late U. S. Land Commission, (now shown to you,) and state whether the signatures of Pio Pico, and Jose Mattias Morano where they occur upon the same, are their genuine signatures; state also ~~their~~ your means of knowledge of those signatures; and whether the documents appearing on Pages 53, 54, & 57 of the Transcript (from the late Board of Land Commissioners in this case) are correct copies of said original documents?"

Ans. 3. - "I know the signatures of Pio Pico and Jose Mattias Morano - and those signatures where they occur upon the documents shown me from the Surveyor General's office, are their genuine signatures - I have seen Pio Pico sign his name frequently and know his signature well - he signed his name sometimes "Pio Pico," and at other times "Pico" with his rubrica attached, in conformity to regulations then existing under the Mexican Government - I know the signature of Jose Mattias Morano because it is my own and I and Pico signed those documents at the time they bear date - the said Pico signing them in my presence: - they were signed in Santa Barbara where Governor Pico then was, on his way to Monterey with

Some troops to quiet some disturbances; the Governor had the power to sign official documents in any part of the State, but they generally purported to be signed at the Capital of the country, which was then at Los Angeles; the documents appearing copied on Pages 53, 54, & 57 of the Transcript (from the late Board of Land Commissioners, in this case) are correct copies of the said original documents, I have just compared them and know them to be correct copies of the originals;— the said originals are in the handwriting of Juan Castañeda I know him, and saw him write them— they were written under my directions— as my own time was then much occupied by my duties as Secretary to the Government."

Cross Examination.—

Questions by Acting U.S. Dist Attorney.—

Ques. 4.— "At what time and place were you appointed Secretary of the Government "ad interim" under Gen Pio Pico?"

Ans. 4.— "I was appointed on the 4th of May 1846, at Los Angeles Cal^a— and remained there until the 17th of June of that year, at which time I left there and went to Monterey from

whence I returned to Los Angeles about
the 23^d of July of the same year,
Sworn to & subscribed José Matías Moreno
before me this 29th
day of April A.D.
1856.

Jos. Pm. Johnstone
U. S. Commissioner

U. S. District Court

Northern District of Cal.

1856

The United States

vs

Thomas O. Larkins

Deposition of José ~~Blanco~~
Matías Moreno on be-
half of the claimant.

Filed April 30th. 1856.

Johnstone
U. S. Commissioner

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

Thomas O. Larkin } No. 402 =
Claimant & Appellant } On appeal from the Board of
The United States } U.S. Land Commissioners for
California. Case No. 754
on its docket.
Claim for 2/3 of Orchard of Santa Clara

The petition of the said Thomas
O. Larkin - Claimant, petitioner & appellant - rep-
resents to this Honorable Court that this
proceeding is an application by the said Appellant
for a review of the decision of the said Board
rejecting the claim of the said Claimant against the
United States for an undivided two third parts
of the Orchard of the Mission, or Ex. Mission, of Santa
Clara, with the houses adjoining it, located
in front of the Establishment containing about
fifteen acres of lands in the County of Santa
Clara in said State of California; as well the said
claim being under a Grant, Sale and Transfer
bearing date June 30th 1846. from Pio Pico
Governor of the Californias to Juan Castañeda,
Luis Arenas & Benito Diaz, to all the rights &
interests of which said Castañeda & ^{in said Orchard} Diaz, your
petitioner & claimant has duly succeeded: for
a more particular account whereof, for a
description of said land & premises, and for a desaign-
ment of the said Claimant's title, a special reference
is here made to the petition of the said Claimant
filed before the said Board of U.S. Land Commissioners,
and appearing in the Transcript herefrom in this cause.

And your petitioner would represent that the

said Board of Land Commissioners on the 18th day of December A.D. 1855 delivered its opinion & decision rejecting the said claim; and that afterwards, to wit: on the 6th day of February A.D. 1856 a Transcript of the proceedings & decision of the said Board of Commissioners, and of the papers & evidence on which the same were founded, was filed according to law with the Clerk of the District Court of the United States in & for the Northern District of California, in which said Northern District the said land & premises here claimed are situated; and that within six months thereafter, to wit: on the 20th day of March A.D. 1856 the said claimant & petitioner filed according to law a notice with the Clerk aforesaid of his intention to prosecute the appeal taken in this case.

And finally your petitioner would represent that his claim to the said land & premises mentioned in his said petition to the said Board of Commissioners, hereinbefore described, is a good & valid one and ought to be confirmed.

Wherefore your petitioner prays that the said decision herein of the said Board of U.S. Land Commissioners may be wholly reversed and annulled, and that this Honorable Court may decree the title of your petitioner to the said land & premises to be a good & valid one, and confirm the same.

And he will even pray

San Francisco
April 25th 1856

A. J. Whitecomb
Counsel for Claimant & Appellant

This hereby agreed and stipulated

That the foregoing Petition may be held as filed
in the above-entitled cause "nunc pro tunc"
as of the date it bears: and that the answer
on the part of the United States, filed herewith, may be
held as filed as of the same date as the foregoing petition.

Instances }
April 30th 1854 }

C. Russell
Acting U.S. Dist. atty.

A. C. Phiburn
Counsel for claimant & appellant

U.S. District Court
Northern Dist. of California

No 402 =

The United States

vs

Thomas Larkin
Appellant

Petition & Resp.

Filed April 30, 1856.

Shivers,

Deputy.

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A. W. Whitcomb
Counsel for claimant & appellant

UNITED STATES DISTRICT COURT,
Northern District of California.

J. W. Redman et als

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San Francisco, *April 2nd 1857*

The United States

ON this day, before

John A. Monroe

a

Commissioner of the United States for the Northern District of California, duly
authorized to administer oaths, &c., &c., came *Cayetano Arenas*

a witness produced on behalf of the

Claimants

in Case No. *412*, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. *742* 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: *Thornton & Williams for Claimant*
and W. S. Dist Atty

QUESTION BY *Claimant's Counsel*

What is your name, age and place of residence?

Ans. My name is Cayetano Arenas and live San Buena Ventura and am 32 years of age. In the the year 1846 I was an Asst. Clerk in the office of Governor Pio Pico

Look at Exhibit B N^o 1 annexed to deposition of Antonio M. Pico heretofore taken in this case and say whether or not you ever saw this Document before & if you state all you know about it?

Answer.

The writing is in the handwriting of Don Juan Castañada who is now dead. I have seen it before, having had it in my possession. The paper produced was signed in Santa Barbara the Governor being there at that time and was sent to me in Los Angeles and I received it about the 3rd or 4th of July 1846. It pertained to business of my father's and Castañada being a particular friend of my father's, the paper was sent to me with instructions to retain it in my hands till Castañada came to Los Angeles from the Upper Country - Castañada came ^{down} and I immediately delivered it to him. I know of my own knowledge the document was signed before the 7th of July 1846.

I am the son of Louis Arenas one of the Grantees I have no interest whatever in this claim. My father has sold it all.

Cross Examined. I know I received the paper on the 4th of July from the fact that we had a celebration that day in Los Angeles not on account of the Independence of America but because it was a feast day of the Virgin - I recollect so well because I was in Church and was called out and the document was delivered to me. I had no watch and can't state the hour but it was in the morning. It (the paper)

was given to me by the messenger of the Governor - The Governor wrote to me a personal letter, it was in a large envelope with the paper I have hunted for the letter a great deal, I hunted for the letter because I heard that before the Land Commission, it was charged to be a false title, and I wanted the letter to show that it was not a false title, but I could not find it. The letter was signed by Pico. I think the title was sent to me because my father was interested. My father was not there he was in the Upper Country and a few days after he arrived in Los Angeles - Berreto Dias was not there, he was also in the Upper Country - Castaneda was also in the Upper Country - I did not request the Governor to send me the title. The paper was signed in Santa Barbara - I did not see the title signed - I was in Los Angeles. Santa Barbara is two days Journey but it can be done in one.

Savorn & Subscribed
before me this 2^d Day
of April 1857

John A. Monroe
W. J. Commins

Cayetano Arenas

Endorsed.

Filed April 2nd 1857

John A. Monroe

By W. H. Chereus Clerk
Deputy.

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District Court of the United States in & for the Northern
District of California

The United States

Case No. 402 =

vs

for

Thomas B. Larkin

claimant & appellant

2/3 of the Orchard of the Mission

of Santa Clara

It is hereby stipulated & agreed
that the foregoing copy of a Deposition of Cayetano
Arenas (with the papers therein referred to) taken
before John A. Monroe Commissioner &c on the
2nd day of April 1857 in the case of J. W. Redman
et al vs The United States - Case No. 412 on the
Docket of said District Court - may be read & used
in evidence in & upon the hearing of this cause
(The United States vs Thomas B. Larkin Case No. 402)
in all its stages without further proof.

San Francisco }
May 4th 1857 }

Wm Blanding
Dist Atty
A. C. Whitcomb
Counsel for claimant & appellant

U.S. Dist Court
Northern District of California

No. 402 =

The United States

vs

Thomas O. Larkin
claimant appellee

Copy of Deposition of
Cayetano Arenas, and
Stipulation

Filed May 4. 1857.

W. H. Cheves,
Deputy.

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UNITED STATES DISTRICT COURT,

402 ND Northern District of California

PAGE 95

The United States

vs

Thomas O. Larkin

San Francisco, April 23 1857

ON this day, before

Curtis McAllister

a

Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came

James Alexandre Forbes, a witness produced on behalf of the Claimants

in Case No. 402, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 754 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:

A. C. Whisconough, Esq for Clerk -
U.S. Dist Atty by Louis Blandin

QUESTIONS BY

Atty for Clerk

Ques - Your name, age, and place of residence -

Ans - James, Alexandre Forbes - 52 -

I reside in Santa Clara - where I have resided for 20 odd years -

Ques 2 - Do you know the orchard of the Mission of Santa Clara claimed in this case, and if so what does it produce, and how long have you known it -

Ans 2 - I do know it - It produces principally pears there were in for

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see times other fruit trees there but very few - I have known it 27 years -
June 3 - It does not produce wine, there was a small vineyard in it when I first knew it but on account of the ground being so wet it never produced ~~any~~ fruit abundantly.

June 3 - In the month of June 1846 - and for a long time prior thereto, did this ~~orphan~~ ^{orphan} produce anything for ~~blanch~~ or sacramental purposes -

June 3 - It did not -

June 4 - Was ~~there~~ ^{there} an orchard or vineyard used for those purposes at the Santa Clara Mission and if so where was it - ?

June 4 - There was a vineyard which still exists and is situated ^{and} ~~or~~ ^{is} ~~in~~ ^{on} the eastern side of the Mission buildings, that vineyard produced and still produces the wine used for sacramental purposes - There are some few olive trees in the vineyard which produces the oil for the Church -

J. W. Alexander
[Signature]

Examination adjourned until April 25, 4 o'clock

San Francisco April 25, 4, P.M.
Examination of James Alexander Forbes continues -

Cross Examination -

EXHIBIT FILES DEPT. OF JUSTICE

Ques 1 Is the Vineyard of which you speak as being in the orchard still in existence?

Ans 1. I do not know, I have not been in that orchard for the last two years -

Ques 2 - What was the extent of that Vineyard?

Ans 2. About 20 years ago it had about a hundred vines, it occupied one of the small squares formed by the fruit trees on the Southern side of the orchard -

Ques 3. By whom was that Vineyard planted and by whom used at that time?

Ans 3. I was informed by the old resident Missionary Priests that that orchard and vineyard was planted by the Indians under their direction - It was used by the Missionary Priests and by the Indians -

Ques 4 - What do you mean by sacramental purposes?

Ans 4. I mean the wine used daily at the Sacrament of the Mass and the oil used in baptism & extreme unction of all of which being three of the Sacraments of the Catholic Church -

Ques 5. ~~How~~ In what way was the fruit of this orchard consumed -

Ans 5. During the time of the old Spanish Missionary Priests, all the fruit of that orchard was used by the Priests and distributed among the Indians. Posterior to the secular

ization of the Mission the fruit was disposed of by the Administrator of the Mission - And on the restoration of the Mission to the Charge of the Resident Missionary Priest a part of that fruit was disposed of by him for his maintenance, and the maintenance of the Church -

June 6

was not the fruit of that orchard necessary for the health, support, comfort and maintenance of the Mission and its inhabitants.

Sub-

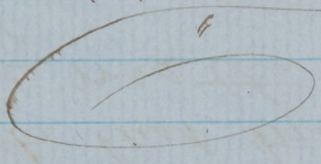
I believe it was conducive to the comfort and the health of the old Missionary Priests, and the Indians during their time, and also to that of their successors. And I know that it was conducive to the support of the Church after it was restored to the charge of the resident Priests, he selling the fruit having no cattle.

J. W. Alex. Forbes

Sworn to & subscribed
before me this 25. April 1857,

— Cutter McLister

U.S. Commissioner



United States District
Court for the Northern
District of California

No 402

The United States

vs

Thomas O. Larkin

deposition of James Alexander
Forbes a witness produced on be-
half of the claimants

Filed May 4, 1857,
W. H. Church,

Deputy,
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At a Stated Term of the District Court of the
UNITED STATES OF AMERICA, for the Northern District of
California, held at the Court Room, in the City of SAN FRANCISCO,
on *Wednesday* the *twenty eighth* day of
April 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

Thomas O. Larkin

D. C. 402: L. C. 754.

Decree

This cause came on to be heard on appeal from the final decision of the Board of Commissioners to ascertain and settle the private land claims in the State of California, under the act of Congress approved March 3^d 1851, upon the transcript of the proceedings and decision of the said Board of Commissioners and the papers and evidence on which the said decision was founded, and upon the further evidence filed in this Court; and it appearing to the Court that the said transcript has been duly filed according to law, and counsel for the respective parties having been heard, it is by the Court hereby ordered, adjudged and decreed that there is no error in the said decision and that the same be, and hereby is, in all things affirmed; and it is likewise ordered, adjudged and decreed that the claim of the appellant is invalid and that the same be, and hereby is, rejected.

Ogden Hoffman
District Judge

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United States District Court, Northern District of
California.

The United States

vs.

Thomas O. Larkin

~~ORDER.~~

Decree rejecting claim.

Filed May 21, 1858,

W. F. Cherry

CLERK.

By

DEPUTY.

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Thomas O. Luckin

vs

No. 402 ND
April 28th 1858

The United States.

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The claim in this case is founded on the alleged grant to Castaneda Aenas & Dias, already recorded the merits of which were considered in the case of Redman vs The U. S.

The testimony in the two cases is nearly identical - except that in this the depositions of John Forster & Jose Matthias Moreno have been taken

John Forster swears to the genuineness of Pio Pico's & Moreno's signatures - I do not understand it to be disputed that the documents were actually signed by them - The allegation on the part of the U. S. is, that the signatures were affixed after the conquest of the Country

First witness in addition that the grant is in the handwriting of Francisco Lopez now deceased -

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The deposition of this witness was the first taken in the cause - He was not probably aware that the document would be proved to be in the handwriting of Casteneda - a fact admitted by Moreno himself whose testimony was taken since the claim was rejected by the Board -

Moreno testifies that the signatures of himself and Pico are genuine and affixed at the time the documents bear date, ^{& that Pico signed them in his presence} He also swears that the documents are in the handwriting of Casteneda - that he saw him write them that they were written under his (witness) directions - as he was much occupied with official duties

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It is enough to say with respect to this statement that it is abundantly proved by the testimony of Gui: Castro Bunto Dias, Luis Arenas & Cayetano Arenas that Castue da could not have been at Santa Barbara on either the 30th June or the 2^d July the days on which the documents are dated -

The ^{statement} testimony of Cayetano Arenas the chief witness for the claimants, is sufficient of itself to wholly incompetent. He with the idea that Castue da could have been at Santa Barbara and written the grant by Inueno's ~~the latter~~ ^{his} directions -

Arenas states that the Governor sent the grant to him "with instructions to retain it until Castue da came from the upper country"

4

It cannot truly be pretended that at that time Castañeda was with the Governor writing out the grant and receipt and delivering the articles mentioned in the latter —

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In the opinion delivered in the case of Pedraza vs the U.S. the omission to take the depositions and to obtain explanations from Pico and Moreno was a doubt to —

The testimony of Moreno, when taken in this case has confirmed me in the views there ~~is~~ expressed in that opinion, as to the character of this claim —

~~The claim must be rejected.~~
On the hearing of the cause it was objected on the part of the claimants that the depositions of Benito Diaz and others which are contained in the trans

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Thomas O. Larkin

W

The U. S.

Division

Apr. 23 1858

5

depositions filed in this case of the proceedings of the Commission were not properly in evidence before this Court -

Those depositions were admitted under a stipulation which provided that "the depositions of Don Benito Diaz &c taken in case No 742 on the docket of this Commission may be read and used in evidence in and upon the hearing of this cause before this Commission only" &c

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It was urged that under this stipulation and those by its terms the ^{admission in evidence} ~~introduction~~ of the depositions ~~only~~ before the Board ^{the testimony was} only - and that ~~if~~ if desired to be used by the U. S. in this Court ~~they~~ ^{it} must be ~~that~~ regularly taken -

The District Attorney Thompson proposed that the witnesses should be called by the Court with liberty to either side to cross examine - This proposition was declined - He then contended that by the Act of 1851 the Court was required to render judgment

on the pleadings and evidence taken before the Board and contained in the transcript — as well as the further evidence taken by order of this Court. And that depositions could not be admitted and used in evidence before the Board without becoming a part of the evidence in the case to be considered by this Court. And that all stipulations by which ~~the admissibility~~ of the evidence was ~~so~~ ~~con~~ ~~ferred~~ to ~~allow~~ ~~sought~~ to allowed the evidence to be used before the Board but withheld it from this Court were void — controlled and avoided by the positive provisions of the Statute.

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I should have much preferred that ^{to have had} the witnesses ~~should be~~ re-examined with full opportunity to the Counsel for ^{the} claimant to cross examine — The U. S. however insist that the

vidence is already in the case and call upon the Court to pass upon the question -

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I am not without doubt on the point - but I incline to the opinion that whatever evidence is legally admitted and used as such before ^{the Board} becomes by force the statute evidence in this case Court on appeal - notwithstanding that a stipulation of Counsel may have provided that it should be used and read before the Board ^{only} ~~alone~~ -

If this evidence be received I think it clear as before stated that under the proofs the case ^{must} ~~may~~ be rejected - I have stated the points made by the Counsel for Claimant that it ^{may} ~~may~~ be availed of in the Supreme Court on appeal.

But even without these depositions it is no means clear that the

W. S.

M

Sankin

Opinion

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8

claim should be confined on its merits -

These ~~facts~~ would still remain proof that the grant was signed at Santa Barbara - & that it ^{is} was in the handwriting of Casteneda - ~~that~~ ^{the statement of} ~~as~~ ^{Agelaud} ~~was~~ ^{that} ~~it~~ ^{was} sent to him on the 24th July to be retained until Casteneda arrived from the upper country, ~~and~~ ^{is} of itself ~~not~~ justifies the inference that Casteneda could not have seen, at the time the grant was drawn, with the Governor and, the hypothesis that he might have drawn it & sent it to the Governor is not only inconsistent with Moreno's evidence, but irreconcilable with the fact that the date of the instrument is in the same handwriting and ~~and~~ ^{and} evidently written at the same time with the body of the instrument -

But even if this hypothesis be admitted it destroys the pre

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9 supposition which would have arisen from the date that the instrument was executed on that day — The Burden would then be on the claimants to establish the date —

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This they have attempted to do by the evidence of ~~Agata~~ ^{Moreno} ~~Moreno~~ and ^{Cayetano} ~~Moreno~~ ^{Moreno} —

But their testimony is as we have seen contradictory — On the one swearing that Casteneda drew out the grant by his direction because he was much occupied — ~~that~~ ^{the} other, ~~swearing~~ that it was sent ^{to} him to be delivered to Casteneda when he arrived from the upper country —

The only evidence of the payment of the alleged consideration is the receipt of Pio Pico, also in the handwriting of Casteneda and purporting to be written ~~not~~ ^{at} Los Angeles on the 2^d July the very day on which if Cayetano

Arenas is to be believed
the Governor must have
forwarded the original grant
to him to be delivered to
Castro —

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In the absence of all proof
from the archives, of all
evidence of a possession un-
der the former government, & of
all explanation from the
Governor as to the circumstances
under which he made the
grant or the payment of
the consideration ^{incurred to} I think
it would be the duty of
the Court even if the deposi-
tions referred to be excluded
to reject the claim —

But it is objected by the
part of the U. S. that, assum-
ing the grant to have
been ~~in any~~ executed on the
day it is dated and for the
consideration mentioned in it
or shown by the receipt, it is
void for want of power in

//

8 //

The Governor to make it.

The general rights of the Governor of California —

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8

8

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3

~~laws of California to~~
to grant vacant lands formerly
pertaining to the Missions is
not disputed —

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It is urged however that state
exercise of this right was
at the time of making this
grant ~~under consideration~~
expressly prohibited by the
Supreme Court.

This prohibition is supposed
to be contained in the follow-
ing official note —

{ Ministry of Justice }
{ Public Instruction }

" Most Excellent Sir

His Ex^{ty} the President has
received information that the
Government of the Department
has ordered to be put up at
public sale all the property
pertaining to the Missions which
you predecessor had ordered
to be returned to the respec-
tive Missionaries for the di-
rection & administration of
their temporalities: Therefor he
has thought proper to direct me

4

" to say that the said Gov^t
 " will report upon these partic
 "ulars suspending there upon
 " all proceedings respecting the
 " alienation of the before mentioned
 " property until the determina
 " tion of the Supreme Government

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" I have the honor to
 " communicate it to you &c"
 " for the purposes in the aforesaid
 " protesting to you my consider
 " ation and esteem

" God & liberty

" Mexico Nov. 14. 1845

" Montediego

" To his Ex^{ty} the Gov^r
 " of the Department of
 " the California -

The effect of this instrument upon the power of the Governor is the question to be examined.

The official note above quoted expresses unquestionable rejoins a suspension of all further proceedings as to the property referred to. But what property

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 does it refer to? The document itself states - "The property which your predecessor had or owed to be returned to the respective Missionaries for the direction and administration of their temporalities"

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The Predecessor referred to was Michel Tomena - The inquiry then is what property had Michel Tomena ordered to be returned to the Missions?

The order of Michel Tomena is contained in his Proclamation of dated March 29th 184³

But to understand clearly the objects and effect of that Proclamation the then existing condition of the Missions & the previous act of the Govt with regard to them must be noticed.

The decree by which the Missions of California were secularized was passed as is well known in 1833 - Its general object was to convert the Missions into parishes under charge of a secular priest or curate & to place

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6 from
villages and distribute the lands
to colonists. Of the houses belong-
ing to the missions, one was to
be selected as the residence of
the curate; and land was to be
appropriated to him not exceeding
200 yards square — the rest were
to be used ~~as~~ ^{for} town houses
primary schools & public establish-
ments and offices —

Various decrees & ~~instructions~~ were
made and instructions given
^{during the years 1833 & 1834}
having for their object to secure
the colonisation & render effective
the secularisation of the missions
as provided by the first decree —

By the instructions given to
Don Jose M. Niza Political Chief
of Upper California provision was
made for the distribution of the
movable property of the missions
and the 9 August 1834 Figueroa
then Gov: of California made for
the provisional regulations on
the same subject. "that the ful-
fillment of the law might be
"perfect" By these regulations
the Commissioners who by a pre

regulation had been authorized
 to take charge of all the "lands
~~and~~ moveable securities and
 property of all classes, were
 required to make out invento-
 ries of the property of the mis-
 sions "such as houses churches
 workshops and other local
 things - stating what belongs to
 each shop such as houses
 "that is to say utensils furniture
 and implements - as also of
 the vines & vegetables with
 an enumeration of the ~~plants~~^{shrubs},
 also an estimate of the num-
 ber of cattle &c. Such the invento-
 ries were to be kept from the
 knowledge of the Priests & to
 be under charge of the Com-
 missioners -

It is apparent from the whole
 tenor of the provisional regula-
 tions that the Government intended
 to take possession of all the
 property real & personal belong-
 ing to the Missions - that the
 Curates who were to be appointed
 were to be supported by salaries allowed

ly the Gov's and that until their appointment the missionaries were to be relieved of from the administration of temporalities & to confine themselves to their spiritual functions—

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The provisional regulations made by Figueroa seem to have given rise to great abuses for in January 1839 we find Gov. Alvarado in view "of the mournful condition in which affairs now are" ^{speaking} a provisional law defining & restricting the powers of the administrators of the missions and subjecting them to the control of a visitor On the 1st March 1840 having ^{observed} that his previous decree of Jan^y 1839 "had not been sufficient to strike at the roots of the existing evils, he abolishes the office of ~~Stewards~~ ^{the} Administrators, and substitutes in the place Stewards whose duties he prescribes— The object of these arrangements appears to have been to secure the faithful & economical administration of the

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of the affairs of the Missions
the protection of the natives—
and the preservation & proper
application of the property—

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Such seems to have been the
condition of the Missions at the
date of Michel tomé's Procla-
mation—

By the 1st article of that Proclama-
tion declares that the Gov^t will
order the Missions of San Diego
San José &c to be delivered up
to the Rev. Padres whom the
respective Viceroy may ap-
point, and said Missions
shall continue to be administered
by them as tutors to the Indians
in the same manner as ^{they held them} formerly

It is perhaps not very clear
whether by this Proclamation the
Governor intended to ^{restore to} ~~order~~ the
delivery to the Padres all the
lands, remaining ungranted at
the time or only the houses
orchards gardens &c which
owed their existence to the la-
bor of the Missionaries

It was the 2^d article of the Procla

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would seem to favor the 1st views for it declares "that as policy makes irrevocable what had already been done the missions will not claim any lands already granted up to this date" seeming to imply that they were authorized to claim ^{the restoration of} all the ungranted land —

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On the other hand it is evident that the Proclamation was made in pursuance of the President's decree of Nov. 17. 1840 — This decree issued on the petition of the Bishop of the California ~~that petition which was passed~~ ^{was to decide} in ~~the case of J. S. Alley or~~ ^{the U. S. and is admitted in evidence in this cause} — The app^t In that petition the Bishop adverts to the destitute condition of the Priests and the disorders which had arisen in the missions and insists that "the houses and orchards which the missions had made which are contiguous to and in immediate communication with the churches

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 "Remain to the use and bene-
 "fit of the Missionaries"

It may therefore very possibly be
 that the restoration ordered by
 Micheltoressa was only that of
 the houses orchards gardens &c
 solicited by the Bishop - ^{& was} not in-
 tended to be ~~the~~ ^{the Fathers} ~~the~~ of the
 extensive tracts of uncultivated
 lands formerly pertaining ^{to} the Es-
 tablishments - The last clause of
 the Proclamation clearly shows
 that the Government intended to
 retain the rights of granting such
 lands for the Governor promises
 not to make any new grants
 "without the ~~the~~ information of
 "the Rev'd Padres, notorious uncer-
 "tainty want of cultivation or
 "necessity" - It is possible however that
~~we are inclined to think~~
~~that~~ ^{of} the intention of Gov. Michel-
 toressa was not merely to restore
 the houses orchards &c to the
 Fathers but by placing all the
 lands of the Missions under their
 administration and subjecting
 the Indians to their tutelage as

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see
 Decree of March 1843

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See his letter was
note of Dec. 1844
& contents of
a...

1

to collect and protect that
 disposed and oppressed people
 Be this as it may the design
 seems to have very soon aban-
 doned and we find Michelton
 never granting missions lands as
 freely as any of his predecessors.
~~On the 20th May 1845 the Depart-~~
 mental Assembly passed a law
 striking the sale of certain of
 the missions & the leasing of
 others and in pursuance of this
 decree Gov Pio Pico on the 28th Oct
 1845 issued "regulations for the
 renting and alienation of the
 "missions" the first of which
 provided that certain of them
 should be sold to the high-
 est bidder
 By a previous decree of August
 23-1844 the departmental Assembly
 had authorized the Governor
 to expose to sale by mortgage
 or lease the property chattel
 and cultivated lands of
 the missions of Upper California
 to defray the expenses of the
 pending war with the U.S.

12 ab

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On the 24th August 1844 the Departmental Assembly passed an act providing for the sale of Mission property to defray the expenses of the war with the U. S. supposed to be impending - The war did not however occur and on the 21st April 1845 the Assembly ^{passed a decree} ~~passed~~ the sale of the Missions and reserving and appropriating the adjoining lands as common lands -

On the 28th May 1845 a ~~law~~ ^{decree} was ~~passed~~ ^{made} by the Assembly ~~which~~ directing the sale of certain of the Missions which were regarded as villages, and the leasing of others "To expedite the enforcement of this decree" Gov. Rio Pico on the 28th Oct. ¹⁸⁴⁵ issued regulations for the renting and alienation of the ~~Missions~~ ^{Missions} the first of which provided that certain of them should be sold to the highest bidder -

on the 30th March 1846 the Assembly made a decree authorising the Govern-
ment to carry into effect the decree
of the 28th May last and providing
that ^{if necessary} to avoid this total loss and
in case it was impracticable to
lease them they might be sold
at public auction to the
highest bidder -

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The Assembly does not at this time
seem to have been aware of the
order signed Montedica which
issued in accordance preceding - for
we find from their records that
on the 15th April that order was
officially communicated to them
by the Governor. No subsequent decree
with reference to the Mission formally
was made until after the request
of the Country -

It is not easy to perceive from what source
the Assembly derived the power they thus attempt-
ed to exercise. By the Mexican Constitution of
1843 the powers of the Assembly under the Coloni-
zation laws were preserved and those laws were re-
quired to be observed. But by the colonization laws their
powers were confined to approving or disapproving the
concessions made by the Governor nor have I been able
to discover whence

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And the regulations and ~~decrees~~ orders of the Supreme Executive -

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The order signed Montez de Oca is dated as we have seen on the 14th Nov. 1845 - The decree of the Assembly which Pio Pico, endeavored to carry into effect by his proclamation of Oct. 20, 1845 - was passed May 28th 1845 -

It is probable therefore that this decree occasioned the order of Nov. 14, from the Supreme Government by which all further proceedings were suspended - and it would seem that the Supreme Govt. interposed at the earliest moment to prevent the Governor and the Assembly from carrying out the designs which this decree and Pio Pico's ~~order~~ the Governor's proclamation indicated

13 a

3^d April
1846

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and by a subsequent decree
of April 21st

It is probable therefore that
these decrees, viz that of May
28-1845 and that of August
23-1844 and the ~~etc~~ occasional
the communication of Nov. 14.
1845 from the ^{Supreme} Gov^{ernment}
by which ^{respecting the termination of the property of the} the proceedings
were suspended -

The words of the order in the
original are "Los Bienes pertenentes
a las Misiones" ~~It would seem~~
~~that~~ The term Bienes ^{appears to be} of ~~some~~
comprehensive signification import & in-
cludes all things, not being persons
which may subsist for the uses of
Man - It may perhaps ~~correctly~~
be rendered properly by the word
"property" - and would thus seem
to refer to that those cultivated
lands orchards &c and other ap-
partenances such as houses work
shops utensils &c which ^{as} we have
seen had been taken possession of
by the Administradores and which
on the petition of the Bishop
had been recognized by the President

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in his decree of Nov. 17, 1840 as belonging to the Missionaries -

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It is to be observed ^{moreover} ~~however~~ that the President in the order last ~~above~~ referred declares that he decrees in conformity with every thing which the ~~Rev~~ Bishop of the California has requested and also in conformity with the law of Nov 7, 1835 which directs the Missions to be restored to their former condition, for which purposes orders shall be issued to the Governor of the California for the restoration to the Fathers of all the possessions and property used by them ~~and~~ under their administration for the conversion of the Heathen &c -

The terms of this order ~~too~~ ~~mean~~ ~~to~~ ~~indicate~~ that the ~~restoration~~ Gov. referred ~~rather~~ to the property used by the Missionaries in their pious labors and not to the ~~Heathen's~~ tracts of vacant land which might formerly have been included within the limits of

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But even if this question were still open I should be of opinion that the right of the Governor to grant the vacant lands of the Missions ought to be affirmed. The laws of 1833 - & 1834 and the Provisional regulations & instructions ~~made~~ ^{have} made in pursuance of ~~them~~ ^{have} clearly indicate a two-fold ~~object~~ ^{purpose} object - The first is to secularise the Missions & convert them into parochial curacies - The 2^d is to take possession for the benefit of the nation of all the property belonging to the Missions - such as workshops utensils furniture implements - also the vineyards orchards cattle &c. The law of Nov 26. 1833 in terms authorises the departmental Gov^{ts} "to use in the most convenient manner the property devoted to pious uses in order to facilitate the operations of the Commission" (for secularising the Missions) - When therefore the Government in view of the abuses and injustice consequent upon

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these laws & regulations interposed by the the law of 1835 the order of 1840, on the petition of the Bishop, the proclamation of Michel Tomena & the Provisoria dioca document of 1845 it is most probable that they ^{it} merely intended to suspend or annul that portion of the laws of 1833 & 1834 which related to the "property" of the Missions - and not to interfere with the disposition of the vacant lands adjacent to them - ~~to~~^{to} which the Missions could pretend to no title either in law or in justice.

The fact that Alvarado & Michel Tomena continued to grant vacant lands belonging to the Missions without so far as appears objection from any quarter strongly corroborates this view and it was only when by its decree of May 28th 1845 the ^{Departmental Assembly} ~~Government~~ proposed to sell or lease the entire property of the Missions that the order to suspend proceedings was issued.

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which we have seen was
aloue insisted on by the Bi-
shop in his petition to the Pres't
in 1840 -

we have thus the ^{practical} construction
given to these laws by both the
Government and the Missionaries -
~~the latter of whom had the strongest~~
~~interest to give it -~~

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Pio Pica himself testifies that
he made the grant on the authority
of an official communication he
~~received~~ ^{dated} March 10. 1846 - from
the Supreme Gov't - In this Com-
munication the attention of the Gov-
ernor and of the Commandant General
is called to the actual condition
of the national affairs and he
is urged to take such measures
as he may judge most suitable
for the defence of the department
for which purpose ample powers
are given to ~~him~~ & both to the
Governor & the Commandant
General - The Proclamation of
President M. Paredes y Villaza is
^{dated March 13. 1846}
to the same effect - and it
there authority thus conferred

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for the sake of argument
 But admitting that the Governor
 authority ~~is~~ to grant under the
 colonization laws the vacant
 lands formerly included within
 the limits of the missionary
 establishments, it seems equally
 clear that under the law of 1835
 the order of 1840, ~~in~~ the petition
 of the Bishop, the proclamation
 of Michel Comera and the order
 of Sept of 1845 signed Montes di
 oca he was without authority
 to grant the orchards vineyards
 workshops buildings &c which
 the labor of the fathers had
 created, and to ^{the enjoyment of} which as un
 ged by the Bishop they ~~could~~
 had a just and undeniable
 claims.

Adopting then the more limited
 construction of Michel Comera's
 proclamation and the Montes di
 oca document it is evident that
 the Governor had no right to
 make ~~the~~ sale of such as that
 alleged in this case viz of
 an orchard planted by the Pious

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contiguous to the Missionary buildings and of which they had for long previously seen in the enjoyment -

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The Com if the decree of the Assembly of May 28th 1845, and that of March 30th 1846 passed to give effect to it, could be regarded as conferring any authority on the Governor not previously possessed by him, they could ^{do} not authorize a sale such as that alleged in this case - for ^{by the terms of the} sales if found necessary were required to be made at public auction -

But the grant ~~in~~ produced refus for the authority of the Governor to ~~make the sale~~ to ~~an~~ set a decree of the Assembly of the 13th April 1846

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The records show that a meeting was held on the 30th March
and on the 15th April - at which ~~the~~ ~~proceedings~~ of
the session of March 30th were as usual read & approved - ~~At~~ ~~this~~ ~~meeting~~ ~~the~~ ~~minutes~~ ~~of~~ ~~the~~ ~~meeting~~
was as before ~~the~~ ~~minutes~~ ~~of~~ ~~the~~ ~~meeting~~ -

I have not been able to discover what decree of the Departmental Assembly is here alluded to - none of that day has been produced nor is it alleged that any such is found in the records of the proceedings of that Body -

It is noted however that the order contained in the Moules dioca document was revoked by the ~~de~~ ~~Circular~~ ^{Communication} signed "Lomel" and addressed to the Commandant General of the California under date of March 10 1846 -

With reference to this document it is to be observed that it appears to be a circular addressed to the Commandant General amongst other functionaries - All of it except the address is marked as a quotation and its object seems to have been to stimulate the public authorities to a vigorous defence of the national territory & honor

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and the maintenance of the national honor. The only clause ^{by} ~~from~~ which any authority can be deemed to be conferred on the Governor, is that in which it is stated that the Supreme Gov's "expects from you

" loyalty and patriotism that you

" will dispose such measures

" as you may judge most suitable

" for the defence of the departments for which ~~part~~ object

" ample power is given to you

" and Señor the Governor"

It is evident that the power here conferred was given to the Commandant General as amply as to the Governor. It ~~has not~~ ^{can hardly be} ~~can~~ pretended that under it the Commandant Genl. could have sold the buequias and orchards of the missions to whomsoever, at whatever price he chose —

It appears to me that the object of this circular was merely to authorize and direct

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the General commanding to take the proper military measures for the defence of the country - and that had it been intended to revoke or modify the order signed under duress which prohibited the sale of the mission property & which was issued only 4 months previously - that objection would have ^{been} ~~been~~ vocally expressed and the Governor directed to ^{make} ~~himself~~ ^{himself} forth ~~second~~ ^{to} sales of that property ^{to procure} ~~as a means~~ ^{resources} of obtaining ~~resources~~ for the war.

The Board of Commissioners were unanimously of opinion that this circular conferred no power to make the sale at bar, and in that opinion I concur.

From the foregoing it follows that admitting the Governor's right to grant the vacant lands of the missions or to sell them, as to which latter

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I express no opinion, it is
 nevertheless clear that he had
 no authority either to grant or
 sell the vineyards orchards, cere-
 taries mission, fuel dings & which
 on the petition of the Bishop
 had been restored recognised
 by the President as belonging to
 the Fathers, which had been
 restored to them by Michel Torrea
 and which ~~was~~ the
 attempt to ^{sale of} ~~sell~~ which under the
 Assembly's decree of May 28th
 1845 the Supreme Gov^t had
 promptly interposed to prevent.

If these views be correct the
 grant ^{claim} must be rejected
 for want of authority in
 the Governor to make the
 grants.

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J. D. Sackin

J
K. S
Opinion

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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, *Jan'y 26* 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. 754. on the Docket of this Board, wherein

Thomas N. Sarkin is ——— "Part of the Orchard of Santa Clara" ———
Which Transcript I have the honor to accompany herewith, and request your receipt for the same.

I am, Respectfully,

Your Obedt Servant,

Geo. Fisher

To the Hon. *J. A. Monroe Esq.*

Attorney General of the United States,

Washington, D. C.

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