

CASE No.

412

NORTHERN DISTRICT

---

ORCHARD OF SANTA CLARA GRANT

J. W. REDMOND et al.

CLAIMANT

LAND CASE 412 ND 198 pgs.

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U.S.A.  
25% COTTON FIBER  
POWER BOND  
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412 ND  
PAGE 1

# TRANSCRIPT

OF THE

# PROCEEDINGS

IN CASE

NO. 742

*J W Redmond, et al.* CLAIMANTS

VS.

THE UNITED STATES, DEFENDANT,

FOR THE PLACE NAMED

*Orchard of Santa Clara*

THE STATE OF MISSISSIPPI

IN SENATE

1871

OFFICE

OF THE

PROCEEDINGS

OF THE

LEGISLATURE

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 J. W. Redmond et al,  
for the Place named  
"Orchard of Santa Clara"  
was presented, and ordered to be filed and docketed with No. 742 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, April 11 '1854  
Case No 742. J. W. Redmond et al. for the orchard of Santa Clara, on motion of claimant's Counsel, was ordered to be placed at the foot of the 1<sup>st</sup> Class cases on the Trial Docket.

San Francisco, June 27 '1854  
In the same Case the Depositions of Augustus Redmond and Antonio Maria Pico, witnesses in behalf of the claimant, taken before Commissioner Peter Scott the last with documents marked Exhibit B No 1, & D No 2, annexed thereto, were filed;

(Vide pages 6 & 9 of this Transcript)

San Francisco July 18' 1854.  
Case No 742 was submitted on briefs  
and taken under advisement.

San Francisco Nov<sup>r</sup> 7' 1854

In the same case the Counsel for the  
claimant filed the following affidavit  
to wit:

(Vide page 87 of this Transcript)  
and the prayer of the Petitioner therein  
was denied.

+ San Francisco  
Nov. 28' 1854. In the  
same case the U. S.  
Law Agent filed the  
following motion &  
Affidavit, (vide  
page 89 of this Trans-  
cript.)

San Francisco, December 6<sup>th</sup> 1854

In the same case the U. S. Law Agent,  
and his Associate filed their joint affidavit,  
and the Affidavit of Benito Liez;  
(Vide pages 90 & 91 of this Transcript)

San Francisco, Dec<sup>r</sup> 19' 1854.

In the same case Commissioner  
Alphens Felch delivered the decision  
of the Board upon the Motion of the  
U. S. Asso Law Agent filed on the  
28<sup>th</sup> November ult granting the same  
Whereupon it was ordered,  
that this case be restored to the  
Trial Docket

San Francisco, Dec<sup>r</sup> 28' 1854

In the same case the Depositions of James  
C. Crane, Benito Liez, and James A. Forbes  
witnesses in behalf of the United States,  
taken before Commissioner Peter Scott,  
were filed.

(Vide pages 11, 20 & 24 of this Transcript)



3  
San Francisco January 9' 1855.  
In the same case the deposition of  
Leoris Arenas, a witness in behalf  
of the United States, taken before Com-  
missioner Peter Scott, was filed:

(Vide page 44 of this Transcript)

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San Francisco March 6' 1855  
In the same case the deposition of  
Jose Castro a witness in behalf of the  
United States, taken before Commissioner  
Peter Scott was filed.

(Vide page 59 of this Transcript)

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San Francisco March 22' 1855  
Case No 742 was submitted on briefs  
and taken under advisement by the  
Board.

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In the same case the Counsel for  
the Claimant filed the following stip-  
ulation, to wit:

(Vide page 92 of this Transcript)

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San Francisco December 18' 1855  
In the same case Court R. Aug Thompson  
delivered the opinion of the Board  
respecting the claim.

(Vide page 97 of this Transcript)  
and the following order was made,  
to wit:  
(Vide page 100 of this Transcript)

4

5-  
To the Honorable Commissioners  
to settle Private Land Claims in the State  
of California.

Petition.

The petitioners Joshua W  
Ridman, Charles Clayton and the heirs of  
James M James deceased respectfully repre-  
sent.

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That on the 30th day of June AD  
1846 Pio Pico Governor of California by  
virtue of authority in him vested granted sold  
and conveyed to Benito Diaz Juan Castaneda  
and Luis Armas the tract of land called  
the Star Orchard of Santa Clara and con-  
taining same ten acres more or less the same  
being at the time of the grant enclosed with  
an adobe wall.

That the said land has since  
by proper and fit means conveyances been  
transferred from the said original grantees  
to the petitioners all of which will be fully  
shown by the original title papers, conveyances  
and other proofs which will  
be given in evidence in support of this petition.

And the petitioners further rep-  
resent that they and those under whom they  
hold have been for the last seven years  
and that the petitioners now are in the  
possession and occupation of said tract  
of land.

Wherefore they pray the Commis-  
sioners on the final hearing of this petition  
and the evidence adduced in its support  
to confirm to them the aforesaid tract of  
land.

By their Attys.  
Huller, Tracy & Bellamy.

6  
Filed in Office March 2. 1858.

(Sealed)

Geo Fisher Secy

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United States of America  
State of California

San Francisco June 27. 1854

Deposition  
of  
Antonio Maria Pico

This day personally came before Peter  
Lott a Commissioner for taking testimony to be  
used before the Board of U. S. Land  
Commissioners in said State Antonio Maria  
Pico a witness on behalf of the Claimants  
J. N. Redman et al in Case No 422 on the  
docket of said Board and said witness  
being duly sworn on oath deposed in Spanish  
which was interpreted into English by the  
interpreter to said board as follows. to wit.

The U. S. Associate Law Agent is present

Questions by Claimants Counsel.

1<sup>st</sup> Question. What is your name and  
residence?

Answer.

My name is Antonio Maria Pico  
My residence Santa Clara County California  
My age 45 years.

2<sup>nd</sup> Question.

Are you acquainted with the  
hand writing of Pio Pico and Jose  
Matias Moreno, if you state your means  
of knowledge and look at the document  
marked "Exhibit B 201" annexed to  
this deposition and state whether the

Signatures of those persons whenever they appear in said document, are their genuine signatures?

Answer.

I am acquainted with the hand writing of both of the persons named herein after I have seen them write, and their signatures in this document written are their genuine signatures both of them.

3<sup>d</sup> Question.

Look at document marked Exhibit D In 2<sup>d</sup> and also annexed to this deposition and state whether or not the signature of "Pier" therein written is the genuine signature of Governor Pio Pier?

Answer.

This is his genuine signature. He signed his full name sometimes and only Pier at other times. I have seen him sign it both ways -

4<sup>th</sup> Question.

Are you acquainted with the Orchard enclose of land claimed in this case if you state whether or not it was enclosed at the date of the grant if yes 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.

5<sup>th</sup> Question.

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

Answer.

They are.

6<sup>th</sup> Question.

State if you know what

8  
quantity of land is embraced in the Enclosure of which you have spoken?  
Answer.

About 300 acres square more or less

Cross Examined by U.S. Associate Land Agent.

1<sup>st</sup> 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<sup>d</sup> Question.

Is this the only track 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.

3<sup>d</sup> Question.

What is the name of the smaller one?

Answer.

The name of that one is the small or garden (hereta Chica)

4<sup>th</sup> Question.

By what means do you know that it was the orchard which was claimed in this case?

9  
Answer.

From Cammenport.

Re Examined by Plaintiffs Counsel.  
1st-Justinia.

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Have you or not  
had the Orchard of Santa Clara which  
is claimed in this case. If you have long had  
you know 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 W.  
Jones claimed the same?

Answer.

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

Antonio M<sup>o</sup> Pico  
Subscribed and Sworn to  
before me on this 24th day of  
June AD 1854.

Peter Lott Commissioner  
for taking Testimony &c

Filed in Office June 27. 1854.

By me!

Geo Fisher Secy

Deposition United States of America  
of Augustus Redman State of California 305.

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 Commis-  
sioners in said State Augustus Redman a

10  
Witness on behalf of the Claimant, I the  
Redman Et al in Case No 412 on the docket  
of said Board and said Witness being duly  
sworn on oath deposed in English as follows  
to wit.

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The U.S. Associate Land Agent is present

Questions by Claimants Counsel.

1<sup>st</sup> Question.

What is your Name and  
residence?

Answer.

My Name is Augustus Redman  
My age 24 years My residence Santa Clara  
County California.

2<sup>d</sup> 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<sup>d</sup> 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 easterly direction therefrom.

4<sup>th</sup> Question.

Is there or any other orchard  
or garden of Santa Clara state what  
it is and its relative position to said Church?

Answer.

There is a vineyard South of the



11  
Church: about 200 bars from said Church  
I know of no other.

5<sup>th</sup>. Question.

How much land is contained  
in the Enclosure claimed in this case?

Answer.

I suppose there are between 10  
and 15 acres.

Crops Examined by U.S. Associate Land  
Agent.

1<sup>st</sup>. Question.

What relation are you to  
J. M. Redman one of the Claimants in this  
case and what interest have you in the  
result of the case?

Answer.

I am a Son of Joshua M. Redman  
I have no interest in the result of the claim.  
Augustus Redman.

Subscribed and sworn to  
before me on this 24<sup>th</sup> day of  
June 1854.

Peter Gott Commissioner  
for taking Testimony &c.  
Filed in Office June 27. 1854.

(Signed)

Geo Fisher Secy

Deposition  
of James A.  
Forbes

United States of America  
State of California

300

San Francisco Dec 28. 1854.

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 United

States in Case No 412 wherein J. R. Redman  
et al are claimants, and said witness being  
sworn deposed as follows.

The Caused Judge Horton for  
claimant is present.

Sustains by U. S. Law Agent.

1<sup>st</sup> Question.

What is your name and  
residence?

Answer.

My name is James A. Forbes my  
age 49 years my residence San Jose Califica  
nia -

2<sup>nd</sup> Question.

Are you acquainted with  
the orchard of Santa Clara claimed in  
this case and with Juan Custaneda of your  
State how long you have known them?

Answer.

I am acquainted with both  
the orchard and with Custaneda. I  
have known the orchard about 26 years  
and John Custaneda I have known  
two years before his death.

3<sup>rd</sup> 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 Chan-  
ged hands state who had the possession  
after such change and under what circum-  
stances such change of possession took place?

Answer.

That orchard was in the possession  
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

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those latter years. It still continued in the possession of said Missionary Priests.

In 1850 as near as I can recollect the date, one Clayton obtained possession of said Orchard in a surreptitious manner, he had pretended to rent one of the water buildings for a stable from a Missionary Priest then in charge of said building and he took possession of the Orchard without any authority.

I think about two years since said Orchard was transferred by said Clayton to Joshua P. Redman.

I say Clayton transferred it because it was given up by Clayton when Redman took it, but I have understood said Redman pretended to claim it under some other title.

About the time that Clayton took possession of said Orchard Antonio Maria Osio claimed to have the possession thereof under some title though I know said title.

I know that the Priests gave said Osio possession of said Orchard after some litigation in the Courts at San Jose. I was a witness to the act of possession myself. After Redman took possession he kept it and is still in possession of said Orchard.

10th Question.

What is the value of said Orchard and the annual value of the use and product of said Orchard for the last few years since said Redman 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 \$3000. to \$4000. My estimate is based partly upon the number of trees.

5<sup>th</sup> 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 1833.

6<sup>th</sup> 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 grantee at the time said grant purported 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 hand writing the body of said documents respectively was made or written?

Answer.

I recollect making my said affidavit which is marked "A J L" 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 vizes 80 which papers are now referred to in this interrogatory.

I believe the body of the two documents was in the hands of writing of Juan Castaneda before mentioned

I am acquainted with said Castaneda's hand writing having seen him write?  
Jth Lustron.

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

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Answer.

I know that Pio Pico left the City of Los Angeles on the 14th 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 accompanied by his Governor's Suite Secretary.

I left Santa Barbara on the 3<sup>o</sup> of July and left Pio there. Said Castaneda was not at either of the places Los Angeles nor Santa Barbara at the time I have mentioned nor could I of my own personal knowledge state where he was on my return to Santa Clara on the 13th of July 1846. which as I came by water from below I found that said Castaneda was absent from that place Jth Lustron.

State whether Pio Pico could have been at Los Angeles without your knowing it between said 14th of June and the 30th of same month in 1846 and if may state your reason for saying so.  
Answer.

He could not have been there without my knowing it. I have already stated that he left Los Angeles on the said 14th of June and went to Santa Barbara

a few days after he left Las 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.

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Crops - Examined by Judge Thornton for Claimant -  
1<sup>st</sup> Justice.

In your answer to 1<sup>st</sup> Justice in Chief you stated 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 know of any lease to the aforesaid Clayton but I did hear of the sale of the right of same person in said orchard to said Charles Clayton.

2<sup>d</sup> Justice.

State how you know of the renting of any of the buildings to said Clayton for a stable?  
Answer.

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

3<sup>d</sup> Justice.

Did said Priest in this same conversation say that he rented said building for the benefit of said or for the benefit of the Church or Priest thereof?  
Answer.

I do not recollect.

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4th Question.

Do you know of Gen Kearny taking possession of that Mission, orchard &c. appertenant thereto and constituting the Priest as an Agent to take care of the same for the Government if you state what you know in relation thereto?

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Answer.

I know that Gen Kearny 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 of said Missions.

I know that Governor Mason sent a military force to Santa Clara to eject certain Emigrants who had taken possession of that Mission or some of the lands and orchard thereof as also of the Mission of San Jose, and I know that those Emigrants were ejected from the Mission of Santa Clara and that the possession thereof was given to the Priest.

I also know that Gen Kearny 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 a Mr. Stininger ever had any lease and possession of said orchard under it from the Priest or anybody else?

Answer.

I know that said Stininger never

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had any possession but I did 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 General Riley's intervention, but I am not certain.  
6th Question.

Do you know whether or not said Osio Carr had possession of said orchard if so at what time?

Answer.

I have stated that he had possession about the time of Clayton's taking possession in my claimant in chief herein.

7th Question.

Do you know of any efforts being made by the Priest to maintain the possession of said Osio?

Answer.

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

8th Question.

Did you not understand that Clayton had 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 he succeeded in making some arrangement with Osio which was afterwards frustrated.



by same Agent or Agents of said Osio.  
9th Question.

Was not this arrangement  
made by Clayton with the Trust 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 Trust  
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  
possession by Osio Clayton the intention  
of the Trust and so on do you speak of your  
own knowledge or from hearsay.

Answer.

With regard to Osio's possession  
I speak from my own knowledge. I was  
an assisting witness to the act of possession  
given him by the Trust as regards Clayton's  
possession as spoken of in my Examination  
in Chief. that act was publicly notorious  
but I was not present in person but I  
recollect afterwards seeing Clayton in posses-  
sion. I speak of Jos Clayton. I now rec-  
ollect his name.

As Atty Forks  
Subscribed and Sworn to  
before me on this 28th day of  
December AD 1854.

Peter Gott Commissionary  
Filed in Office Dec 28. 1854.

(signed) Geo Fisher Secy.

United States of America  
State of California

San Francisco Dec. 29. 1854.

Deposition  
of  
James C. Cram

This day came before Peter Lott, Commissioner for taking testimony to be used before the Board of U. S. Land Commissioners in said State James C. Cram a Witness on behalf of the United States in Case No 442 on the docket of said Board wherein J. M. Raman & al are Claimants and said Witness being sworn deposed as follows.

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The Counsel for Claimants is present  
Judge Thornton.

Questions by U. S. Associate Law Agent.  
1<sup>st</sup> Question.

What is your name age  
and residence?

Answer.

My name is James C. Cram  
My age 48 years My residence in San  
Francisco California.

2<sup>d</sup> Question.

Are you an attesting Witness  
to the deed of sale from Benito Diaz to Peter  
Clayton and Raman, and also to the deed  
of sale from Juan Castaneda to the same  
parties of their respective interests in the  
orchard of Santa Clara.

Answer.

It is some time ago and I  
cannot swear positively to have witnessed  
both deeds. If my memory serves me  
right I did.

3<sup>d</sup> Question.

State what took place between

the parties to the sale at that time. When Benito Diaz sold to Watson Clayton and Redman?

Answer.

I went with Benito Diaz as his interpreter to negotiate with these parties the sale of his interest.

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I introduced him to them as the owner of part of said orchard and informed them that he had come there to sell it they talked through me as interpreter till he sold to them his share for as near as I can recollect \$7000. part of which was paid in hand and I think he gave them for the balance. 1st Question.

Was anything said on that occasion respecting the character of the title?

Answer.

Not that I recollect of. I do not remember anything being said as to whether the title was good or bad.

3rd Question.

Did Castaneda ever tell you that he wrote the original deed from Pio Pico of said orchard?

Answer.

He did. He told me it was in his hand writing?

4th Question.

Did Castaneda ever tell you that said sale was bad?

Oth Question and answer objected to as hearsay testimony.

Answer.

I asked him something about the title and he told me it was made in the month

of August 1846.  
4th Question.

State on what occasion and at what time this conversation took place?

Answer.

It took place in Sonoma when Benito Diaz and I went there to obtain from Castaneda a power of attorney to said Benito to sell his (Castaneda's) share of the orchard. This was a week or two after Benito had sold his own share to Watson Clayton and Redman.

5th Question.

Did you ever state to Clayton or any other party interested what Castaneda had told you about the said sale being made in August 1846?

Answer.

I told Clayton.

6th Question.

Did Castaneda ever say anything to you about practicing a deception upon the Americans or not?

Answer.

I cannot say that he ever did.

10th Question.

From what you saw and heard at the time of said sale or any time before did you judge that Castaneda intended to act in good or bad faith?

(10th Question objected to as incompetent)

Answer.

I know formed any opinion as to his intentions -

11th Question.

Was anything said by Castaneda to you about keeping secret what passed between you?

Answer.

There was never any special injunction of secrecy made by Castaneda upon me but in the conversation which took place at Sonoma in which Castaneda Benito Diaz and myself were all parties Castaneda said with reference to the power of Attorney Salizo "go ahead and when the proper time comes we will skin them all or use them all up", or Spanish words to that effect which are not easily rendered into English "Vamos a frejar todos el mundo" -

12th Question -

Did Benito Diaz ever talk with you about the validity of the original and in this case from the Governor or about the grounds upon which it was valid or invalid?

Answer.

He told me it was created in the month of August 1846 and that it was anti-dated and consequently that it never could be sustained or words to that effect.

Cross Examined by Claimants Counsel  
Judge Thornton.

1st Question.

In the communication which you made to Mr Clayton do you recollect whether you told him that Castaneda told you said and was made in August 1846?

Answer -

I cannot say positively that I

told Clayton this as coming from Cast-  
tunda - I told him of the deed having been  
made at that time August 1846 but I  
cannot recollect precisely all that passed  
in words. I cannot recollect the date  
of my conversation with Clayton.

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James C. Creme.

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

Peter Lott Commissioner.  
Filed in Office Dec. 29. 1854.

(Signed)

Geo Fisher Secy

United States of America  
State of California, 300

San Francisco Dec 28. 1854.

Deposition  
of  
Benito Dias

This day came before Peter Lott  
Commissioner for taking testimony to be  
used before the Board of U. S. Land Commis-  
sioners in said State, Benito Dias a  
Witness on behalf of the United States in Case  
No 742 on the docket 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 Judge Thornton for  
claimant is present.

Questions by Mr Blanding the U. S.  
Associate Law Agent Present.

1<sup>st</sup> Question.

What is your name age and residence?

Answer.

My name is Benito Diaz  
My age 40 years. My residence in Monterey  
County California -

2<sup>d</sup> Question.

Do you know Jo's Pico if you  
how long have you known him?

Answer.

I do know him and have  
known him about 20 years.

3<sup>d</sup> Question.

Do you know the orchard  
of Santa Clara and if any sale hasing 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 Pico.

4<sup>th</sup> Question.

To whom was that sale  
made?

Answer.

To Juan Castaneda. Luis  
Armas and myself.

5<sup>th</sup> Question.

In what year, month and  
day was the deed of said sale written?

Answer.

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

6<sup>th</sup> Question.

Where was it written?

Answer.

At San Angeles.

1<sup>st</sup> 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.

2<sup>nd</sup> Question.

In whose hand writing was said deed written?

3<sup>rd</sup> Question objected to by Claimants Counsel because said writing is not produced.

Answer.

It was in the hand writing of Juan Castaneda.

4<sup>th</sup> Question.

How do you know it was in his hand?

( 4<sup>th</sup> Question same objection as to 3<sup>rd</sup> ).

Answer.

I saw him write it.

5<sup>th</sup> Question.

Was said deed the same one of which you testified in your affidavit in this case made Dec 4. 1854 before Alphonso Beck Commissioner &c.

6<sup>th</sup> Question objected to on the ground that said deed is not produced.

Answer.

The deed I am now speaking of is the same which was shown to me when I made said affidavit—

7<sup>th</sup> Question.

Did you see said Pio Pico sign said deed, if nay how do you know he signed it on the same day on which it



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was written?

(11<sup>th</sup> Question Same objection)

Answer.

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

12<sup>th</sup> Question.

What date did the grant bear of which you speak in your said Affidavit?

(12<sup>th</sup> Question Same objection)

Answer.

It was dated June 30<sup>th</sup> 1846.

13<sup>th</sup> Question.

Why was said deed dated on said 30<sup>th</sup> of June and not on that day on which it was written?

(13<sup>th</sup> Question Same objection)

Answer.

I do not know why it was done. Sometimes after it was done I remarked it?

14<sup>th</sup> Question.

Question. Have you lately seen the deed of which you have spoken if you whom whom and in whose possession?

(14<sup>th</sup> Question Same objection)

Answer.

I have seen it twice lately in the hands of Mr McKim the Land Agent once in his Office in this Building and once in some office on California Street.

15<sup>th</sup> Question.

When you so saw it lately

were you satisfied upon examination that it was the same and you saw at Los Angeles in 1846?

(15<sup>th</sup>. Question same objection)

Answer.

Yes it was the same.

Next Question.

Where was you the week immediately before and the week immediately after June 30, 1846.

Answer.

I was either here at San Francisco or at Santa Clara during that time till June 30<sup>th</sup> and the following week I was at Monterey.

17<sup>th</sup> 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?

(17<sup>th</sup> Question same objection as before.)

Answer.

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

18<sup>th</sup> Question.

Where was said Castaneda on the 30<sup>th</sup> of June 1846?

Answer.

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

19<sup>th</sup> Question.

What was said Castaneda doing at that time and in whose company was he?

Answer.

He was at that time a Captain of

Cubany in the Gritia. He was with his  
 Companys or a Company which was raised  
 at the time of the Bear Flag disturbance  
 Gen Castro Gen Alvarado Myself Jose  
 Contreras and others I do not know whom  
 were with him at that time.

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20<sup>th</sup> Question.

Can you fit any particular  
 day about June 30th 1846 on which you  
 was 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 Ignacio Esquivel.

21<sup>st</sup> Question.

Whom did you lead this  
 part of the State for the Southern Country?

Answer.

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

22<sup>d</sup> Question.

In what Company did  
 you leave this part of the State and  
 from what point?

Answer.

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

23<sup>rd</sup> Question.

State if you know when said  
 Castañeda 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 said Command  
of Gen Castro on the plain of Monterey.  
24th Question.

How long did you and  
Custanuda remain together and which  
way did you go with him?  
Answer.

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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 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  
20th of July.

25th Question.

Did you see Pio Pico  
on your route to Los Angeles if you whom  
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 understood he was about Santa  
Barbara.

27th Question.

Was the dub for the sale  
of the orchard of Santa Clara written  
on the same piece of paper with the

Aud of the sale of the orchard of San José.

Answer. It was not.

28<sup>th</sup> 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.

29<sup>th</sup> 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.

30<sup>th</sup> Question.

In whose hand writing was that receipt?

30<sup>th</sup> Question objected to because the paper is not produced.

Answer.

It was in the hand writing of Castañeda.

31<sup>st</sup> Question.

Have you seen said receipt lately if you where?

(31<sup>st</sup> Question same objection)

Answer.

Yes I saw it lately in the hands of Mr McKim the San Agent.

32<sup>nd</sup> Question.

Is that the same receipt which in your affidavit you swore on Dec 4. 1854 that you had examined in this case?

(32<sup>nd</sup> Question same objection)

Answer.

Yes it is the same.

33<sup>rd</sup> Question.

Was you present at the writing of said receipt?

Answer.

I was not.

34<sup>th</sup> Question

Whom did you first see said receipt?

Answer.

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

35<sup>th</sup> Question.

What was the amount paid in said receipt?

(35<sup>th</sup> Question objection above)

Answer.

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

36<sup>th</sup> Question.

In what was said amount to be paid?

Answer.

Part in the products of the country and part in Money.

37<sup>th</sup> Question.

What do you know about the payment of said sum or was it ever paid by you or any one else?

Answer.

Castaneda had an agreement with the Governor that he would give the Governor a note for said sum and said Castaneda 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 paid any of it.

(This answer to 34th question objected to as hearsay testimony.)

35th Question.

Was possession of said orchard ever taken under said deed by yourself or any one else?

Answer.

No it was not.

39th Question.

Did you ever ask for said possession of sea from whom and when?

Answer.

I asked for the possession from Padre Reat through Don Antonio Cisio in 1846.

40th Question.

State what took place when you so asked for the possession, was the said possession granted or refused?

Answer.

The Padre refused to give me possession and said he had a title to said orchard himself from Micheltorma and afterwards applied again to the Padre for possession and he then told me another title had appeared in favor of Don Antonio Cisio.

This answer to 40th question objected to as hearsay.)

41st Question.

Did Padre Reat tell you for whose benefit he himself had a title from Micheltorma, if you whose benefit

did he say it was for, according to the grant?

(11<sup>th</sup> Question objected to as calling for hearsay)

Answer.

He told me he held it for the benefit of the Mission -  
11<sup>th</sup> Question.

Did you ever sell your share in said Orchard if you when?

Answer.

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

11<sup>th</sup> Question.

To whom did you sell?

Answer.

To Raman Watson and Clayton.

11<sup>th</sup> Question.

Were there persons in the possession of said Orchard at the time you sold to them?

Answer.

I believe they were.

Crops Examined by Claimants Counsel.  
12<sup>th</sup> Question.

In your answer to 11<sup>th</sup> Question in Chief herein you say that you saw this deed of sale of the said Orchard of Santa Clara in an office on California Street. Please to state particularly where it was and in what part of this city and what kind of an 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  
 Land Commission. There were cows and  
 calves there as though it were a mechanic's  
 house. I had gone in there at the request  
 of Pedro Robto with him to answer said  
 questions respecting the deed of sale in this  
 case and while I was there the Law  
 Agent Mr McKinnon came in with said paper  
 This occurred about a month ago a  
 little more or less.

2<sup>d</sup> 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 first a few  
 days after I sold my share in said orchard  
 to Ridman, Watson and Clayton and at  
 the time I sold Custaneda's share therein  
 which was about 1850 or 1851. I do not  
 remember the exact time.

3<sup>d</sup> Question.

Was this deed presented before  
 you at either of the sales mentioned in  
 your last answer?  
 Answer.

It was not at either of them.  
 4<sup>th</sup> 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.  
 5<sup>th</sup> 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 trade was made by Castaneda.

7th Question.

Was the sale of the said orchard made on the same day that the deed was written to which you refer?

Answer.

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

8th Question.

At whose instance did you come forward to make your affidavit of the 14th of December 1834 of which you testified in chief herein?

Answer.

I came at the instance of Pedro Roble.

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 14th of December before the Board and about giving your testimony in this case 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 amount. but I have said 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 \$200, as far as I can remember, a little more or less.

12th Question.

Is there no understanding that after this deposition is closed you are to receive a specified sum of money?

Answer.

No. Nothing more than my expenses.

13th Question.

Have you had any conversation with Jas C Crane in the City of San Francisco on the subject of the affidavit which you made on the 4th of December 1851 before this Board or about your giving testimony in this case if you wish that conversation occur, and what did you say as to money which was to be paid to you for testifying against this claim?

Answer.

I have had a conversation with said Crane on the subject of said Affidavit. Crane proposed to me that he would give testimony in this case and

asked me how much Padre Noble would pay. I told him I did not know so, could go and see the Padre and arrange it himself -

Crane told me he had not been able to effect an arrangement with the Padre about it.

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I and Crane have had many conversations in which we have both made misrepresentations to each other to deceive each other.

The conversation I had with Crane about said Affidavit was had at the St Francis Hotel in this city some 3 or 4 days after I made said affidavit as to what I said to Crane about what money I was to receive for testifying against this claim, I have told Crane many lies.  
14th Question.

Did you not, tell said Asst Crone 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 if you what amount of money did 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 said Crane informed me about it and asked me if I would not go and see the Attorneys and the Bishop and the Padres about it and I told him I would not go.

I told Crane I was to receive my expenses but I did not tell him I was to receive any reward. Crane

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told me he would go with the party that would pay him the most. Sometimes he was with the Padres, sometimes on the other side.

15th Question.

Did you ever mention to said Crane the sum of \$2000. 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. Crane told me I had done a poor business by taking sides with the Padres that if I had only taken sides with him he could probably have got me \$4000. or \$5000. from the attorneys.

16th Question.

Have you ever had any conversation with said Crane about your said Affidavit of Dec 11th before you made said Affidavit -

Answer.

I had not Crane nor know 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 \$200 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 not received it in different sums from Padre Hobbs in part and from the Bishop in part to whom I applied for it to pay my expenses here because I had nothing to eat and needed it for my necessary expenses?

2<sup>d</sup> Question.

Have you as yet 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 yet from Government and I have been here upwards of a month as a witness.

3<sup>d</sup> Question.

Have you been solicited to attend as a witness in this case by any other person besides said Padre Hobbs? and how did he solicit you?

Answer.

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

4<sup>th</sup> Question.

Have you been requested by said Padre or the Bishop to testify respecting this act of sale in any other court besides in this Commission?

Answer.

Padre Hobbs has requested me to give my testimony in this matter at the

Clerks Office in Monterey.

5th Question.

State the inducements and reasons given to you in the said letter of the Bishop in requesting you 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.

6th Question.

State accurately the purpose you had in making the misrepresentations of which you speak to Crane and with what view you made them?

Answer.

My reason for telling you these things was that he told me I could have had four or five thousand dollars if I had taken sides with him and I told him at different times those stories.

7th Question.

State whether the following statement in answer to the 13th interrogatory on Crisp's Examination herein is literally true to wit. "It was false, but I told him so to get rid 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.

8th Question.

Who had possession of the original deed of sale of said orchard from the time it was written at Los Angeles till

the time of your sale to Watson Clayton  
and Redman?

Answer.

It remained in the possession  
of Castaneda till about November 1846  
when it was delivered to Antonio Maria  
Osio for the purpose of enabling him  
to obtain possession of the orchard by  
presenting said paper to Juro Real. Soon  
after it was delivered to Osio, he returned  
it to Castaneda. After that Thomas O  
Larkin had it for 2 years and then he  
sent it by my agent Brown to me, about two  
days after I received it from Larkin  
Don Luis Armas sent for it to me at Monterey  
and I sent it to him -

9th Question -

Did you ever make an abso-  
lute sale of your interest in said orchard  
of Santa Clara to Thomas O Larkin?

Answer.

I made a conditional sale to  
him, but I never made an absolute one.  
10th Question.

State fully how said  
Thomas O Larkin pretends how to claim  
your share in said Orchard?

Answer.

I suppose he does it by  
some trick of his. I never made him a full  
sale, but a conditional one, and the con-  
ditions having failed on his part he  
sent me back the title paper.

I sold to Larkin and  
he bought on the condition that if he  
could get possession, he would pay for  
it. He kept the papers three or four years



and Quor got possession of the land  
and when he was about to leave the country  
on a visit to the United States or Mexico,

I sent my agent Sorano  
to him to have a settlement of accounts  
he owed me about \$1000. but he told me  
Sorano he owed me nothing but my pa-  
pas and he sent them to me.

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He never paid me any-  
thing for the orchard and Quor took  
possession of it about two days after  
he gave Sorano the original and he  
sent to me for a copy of it, - I went before  
Philip Roach and told him Larkin  
could have a copy but that I wished  
to keep the original secured to myself.

Larkin got the copy and I  
suppose if he has anything to show for  
his pretended claim, it must be that  
copy.

Ponito Dias

Subscribed and sworn to  
before me on this 24th day  
of December 1854.

Peter Lott

Commissary

Filed in Office Dec 29. 1854.

(Signed)

Geo Fisher Secy

United States of America }  
 State of California }  
 San Francisco Aug. 1853.

Deposition  
 of  
 Luis Armas

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This day Armas and was sworn before Peter Gott Commissioner for taking testimony to be used before the Board of U. S. Land Commissioners in State State Luis Armas a witness on behalf of the United States in Case No 742 on the docket of said Board wherein J. M. Ridman et al are claimants and said witness being sworn deposed as follows.

The claimants Counsel Judge Thurston is present.

Question by U. S. Land Agent.  
 1st Question.

What is your name age and residence?

Answer.

My name Luis Armas. My age 60 years. My residence in Somto Barbara County, California.

2<sup>d</sup> Question.

Where did you reside during the months of June July 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 remember the months.

3<sup>d</sup> Question.

Are you one of the original

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grants of the land claimed in this case called the orchard of Santa Clara?

Answer.

Sam -

4th Question.

Whom were you with when you first saw the title which you secured?

Answer.

In Los Angeles.

5th Question.

In whose hands was it at that time?

Answer.

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

6th Question.

Who went with you from San Jose 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.

10th Question.

Has any petition ever handed to the Governor asking the land for your self Benito Diaz and Juan Castaneda?

Answer - I do not know.

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4th Question.

How long before you saw  
said title did you know of application having  
been made to the Governor for said grant?  
Answer.

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

12th Question.

Was any thing paid to  
Pro Pico for his giving the title to the  
Archbishop of Santa Helena if you what was  
paid?

Answer.

I gave him 200 head of cattle  
and I received back \$300 in change. This  
was in part payment for the said title that  
was my share - I do not know any thing  
about the other payments.

13th Question.

Whom were and to whom  
were those cattle delivered?

Answer.

They were delivered at Pro Pico's  
Ranch of Santa Margarita this side of  
San Luis Rey, the precise time 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  
Pro Pico a writing which showed that  
I made my part of the payment with

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the 200 head of the cattle of Cestanida which  
were there on the Ranch.

14th Question.

When you first delivered  
these cattle to Pio Pico was there any thing  
said to about the rancho of San Luis Rey  
in connection with said delivery if you what  
was said?

Answer.

There was nothing said about  
San Luis Rey.

15th Question.

Had you ever any conversation  
with Governor Pico about his granting to  
you the Rancho of Pala or that of San Luis  
Rey if you when was it and what was  
said?

Answer.

I had a conversation with him  
about the purchase of Pala but he did  
not wish to sell it to me. I do not remem-  
ber the time, but I think it was after the  
sale to us of the orchard in question.

16th Question.

When the cattle you had  
spoken of delivered to Pico in part payment  
for a title to either the Pala Rancho or  
San Luis Rey rancho under the expectation  
on your part that a title to one of these  
would be obtained from said Governor.

Answer.

These cattle were only delivered  
in payment for the orchards of Santa Clara  
and San Jose.

17th Question

Do you recollect when Gen.  
Ballejo 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 Count. I was in San Jac' occupied with my private affairs.  
18th Question.

Where was Juan Castaneda at that time?

Answer.

He was in Santa Clara I think with Gen Castro.  
19th Question.

How long after that was it that you first saw said Castaneda in Los Angeles?

Answer.

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

20th 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.

21st Question.

How long had the town of Los Angeles been in the possession of the Americans before Stockton arrived there?

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 Count. but I do

not know the particulars how about the date  
It was the second time Los  
Angeles was taken that I was introduced to  
Commodore Stockton.

22<sup>nd</sup> Question.

Did you reside in Los  
Angeles in August 1846 and were 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.

23<sup>rd</sup> Question.

Was Benito Diaz present  
when Custumada first showed you the said  
title?

Answer.

I do not recollect.

24<sup>th</sup> 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.

25<sup>th</sup> Question.

Did you remain at  
your residence in Los Angeles after the  
Americans took the place?

Answer.

I did, I never left my home.

26<sup>th</sup> Question.

Was it before or after the  
Americans first took Los Angeles that  
Custumada first showed you the said title?

( This deposition is here suspended for

the present on account of the illness of the  
 witness. (I Got (Commissions) )

January 9. 1855.

The witness again appears and resumes  
 his deposition.

Answer to 12th Question

It was before the Amusees  
 just took Las Angeles that Armas should  
 me the paper. I do not remember how long  
 before.

14th Question.

Where was you when Governor  
 Pio Pico started from Las Angeles with  
 an armed force to fight Gen Castro?

Answer.

I do not remember when I was  
 there. I heard the name spoken of but I  
 was not at Las Angeles.

15th Question.

Did you hear it spoken of  
 before your arrival at Las Angeles. when you  
 went there from San Jose?

Answer.

I do not remember whether it was  
 before or after my said arrival. my mem-  
 ry is weak.

17th Question.

Where did the forces of  
 Castro and Pico meet?

Answer.

I do not know.

18th Question.

Do you know what  
 brought about a reconciliation between said  
 Castro and Pico if you what was it?



Answer.

I do not know what remedied them.

31st Question.

When you heard of Pico's Expedition against Castro, had you not yourself a title from Pio Pico of the Rancho of Pala or for the Mission of San Luis Rey?

Answer.

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

32nd Question.

Where was you when you tried to buy said Rancho of "Pala"?

Answer.

I was in Los Angeles.

33rd Question.

What did you offer Pio Pico for said "Pala"?

Answer.

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

34th 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 I never stayed long in the North at any time.

35th Question.

Who was present when you applied to Pico for the rancho of Pala?

Answer.

I do not remember whether any one was present.

36th 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 were in his possession before he was Governor and I applied to him to buy "Pala" while he was Governor!

37th Question.

Were those same 200 head of cattle the ones you offered him for Pala?

37th Question objected to by Claimants Counsel.

Answer.

No. I did not offer him the cattle for "Pala".

38th Question.

What did you offer him for Pala?

Answer.

I have already said I made him no offer.

39th Question —

How long did Pio Pico keep the said 200 head of cattle after the sale of said Orchard?

Answer.

He still has the cattle now.

40th Question.

In your answer to 11th question herein you state that Castaneda told

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you at San Jose of his application for said orchard, now state all he said to you about it on that occasion!

Answer.

Castaneda told me that would be a good time to petition for the said orchard, and he said that he had cattle in the possession of San Pico that is about the substance of what passed between us upon that subject.

41st Question.

Has any person ever threatened you with personal violence if you testified in this case if you have made such threats!

Answer.

No person has ever threatened me with personal violence with regard to my testifying in the case but I have been told that I was bought to testify.

42nd Question.

Who was in possession of the Orchard of Santa Clara during the year 1846 and state whether either of the said grantors you have mentioned ever had possession of it?

Answer.

I suppose Padre Real had possession of it in 1846 he was there and I know he had possession of it when I demanded 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 Dias or Castaneda 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.

13<sup>th</sup> 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.

14<sup>th</sup> Question.

How did J. H. Redman the Claimant get possession of your said share in the Orchard?

Answer.

I do not know how he got it.

15<sup>th</sup> Question.

When Castaneda 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 title?

Answer.

I do not remember that he showed me any other title.

16<sup>th</sup> Question.

Do you know of any other title having been made about that time.

Answer.

I do not.

Cross Examined by Judge Thornton for Claimant.

17<sup>th</sup> Question.

Was the deed of Sale made by Pico of this Orchard to yourself, Castaneda and Diaz made as written in your house?

Answer.

It was not made or written in my house if such thing was done I was

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ignorant of it. I was innocent of any such thing and could not if I knew it suffer any thing of that kind to be done in my house 2<sup>d</sup> Question.

If Leastaneda Diaz and Goomer Pico had been engaged in your garden 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 any thing 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.

3<sup>d</sup> Question.

Did I understand you to say in your Examination in Chief herein that Leastaneda brought the deed of sale for this orchard after it was fully made and executed and showed it to you being the first time you saw it?

Answer.

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

4<sup>th</sup> Question.

At whose instance do you come to testify in this case?

Answer.

José Porciga requested me to come and told me it was at the instance of the Judge.

5<sup>th</sup> Question.

Did any one offer you any offer?

to any you, or did any one ever use influence with you, to testify improperly, or what was not true in this case if you state who and all about it?

Answer.

Jose Noriega requested me to come and testify in this case on behalf of the Padres. 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 \$150. if I would come. I refused and then I told him if he would pay my expenses and give me \$500. so as to have some money for the use of my family in my absence and remunerate me for the time and service 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.

Ask Inquisition.

Since you have been in San Francisco have you not been asked if you would not testify to things in this case which you had stated to the persons desiring you to swear that you could not testify to?

Answer.

Since I came here I have not been solicited to swear in any way improperly. On my arrival here Padre Nobilo invited me to his house I went and he there asked me what I knew about this

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case and what I could testify to. I told him I had not come there to confession but that when I should appear as a witness before the Commission he would learn what my testimony would be.

The Padre 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 Padre invited me to his house.

1st Question.

When you left San Jose for Los Angeles in 1846 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 understood 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. Sen. Asst.

1st Question.

How many rooms were there in your house at Los Angeles.

Answer.

Five.

2nd Question.

Were Juan Castaneda and Benito Diaz often at your house in Los Angeles about the time the Americans took possession of the country?

Answer.

Castaneda and Diaz visited my house

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about that period. Castaneda laid at my house after he showed me said title to the orchard he had just arrived there from above whom he showed me said title.

3d Question.

Who went down to Los Angeles with Castaneda?

Answer.

I do not remember.

4th Question.

What hour of the day did Castaneda 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 Castaneda at Los Angeles was it that he showed you said title?

Answer.

I do not remember how many days it was - It was shortly after he arrived there - It might have been one or more days.

7th Question.

When Ponce agreed to give you the \$500 had he the money with him or did he borrow it?

Answer.

He went to a Pedro at Santa Barbara for \$400. He had \$100 in his pocket. he paid me the \$500.

Luis Thomas  
his rubric

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Subscribed and sworn to  
before me on this 9th day  
of January AD 1855.

Peter Lott Commissioner  
Filed in Office January 9, 1855.

(Signed) Geo. Fisher Secy

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United States of America  
State of California

San Francisco March 3, 1855.

Deposition  
of  
Jose Castro

This day came before Peter Lott Commis-  
sioner for taking testimony to be used before  
the Board of U.S Land Commissioners in  
said State. Jose Castro a witness on behalf  
of the United States in case No 742 on the  
docket of said Board wherein J P Redman  
& et al are Claimants and said witness being  
sworn deposed in Spanish which was inter-  
preted by the interpreter to said Board as  
follows.

Judge Thornton appears for Claimants  
- Questions by U.S Law Agent.  
1st Question.

What is your name age and  
residence?  
Answer.

My name is Jose Castro My  
age 46 years My residence Monterey California  
2d Question.

Have you ever seen the original  
grant filed in this case if yes when and  
where was it shown you and in whose  
hand writing was it?

Answer.

Yes I saw it in one of the upper  
rooms of this Commission about two months

ap. There is shown to me by Mr McKim  
the U.S. Law Agent and it was in the hand  
writing of Capt Juan Castaneda.  
3<sup>d</sup> Question.

In June of that year said  
Juan Castaneda was at Santa Clara at  
my general head Quarters and also during  
the first days of July about the 10<sup>th</sup> of  
July he was on the road to Los Angeles  
and I saw him at Los Angeles in the latter  
days of July and up to the 11<sup>th</sup> of August  
I left him there when I went at that time  
to Mexico. He was during the months  
named employed as my Secretary.

4<sup>th</sup> Question.

Are you acquainted  
with the Orchard of Santa Clara in  
this case if you in whose possession was  
it in 1846 and when and how did the  
present claimant get possession of it?  
Answer.

I am acquainted with it. It was  
in the possession of Padre Riat in 1846

In 1848 I heard that  
the present claimant had possession  
of it and that he had purchased it but  
I do not know when or how he got posses-  
sion of it.

5<sup>th</sup> Question.

Did you as Commanding  
General receive anything valuable from  
the supposed sale of the orchard by Pico  
and if money had been appropriated  
from the sale for the expenses of the War  
would you not necessarily have known  
it? Give your reasons?

Answer.

I have received any money arising from the sale of this Orchard for the expenses of the war. If money arising from this source had been appropriated for the support of the War I could have known it necessarily as I was General in Chief.

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Cross-Examined by Judge Thornton for Claimant.

1<sup>st</sup> Question.

Do you know where the original grant in this case now is and do you know that it was the original which was shown to you?

Answer.

I do not know where it is. I suppose it is in the Commission somewhere. It appeared to me to be an original grant I never saw any other in the case.

2<sup>d</sup> Question.

Was it not possible that money might have been received by Governor Sico or other consideration for the sale of this Orchard without your knowing it and without your knowing it might he not have appropriated it to public uses?

Answer.

He might have received money or other property for such sale without my knowing it and he might have applied such money or property to public uses not of the Army without my knowing it -  
Jose Castro.

Subscribed and Sworn to  
Before me on this 3<sup>rd</sup> day of  
of March A.D. 1855.

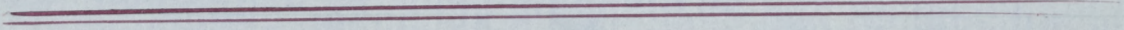
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Peter Lott  
Commissioner }  
}

Filed in Office March 6, 1835

(Signed)  
Geo Fisher Secy.

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Por mi Gobierno Constitucional del  
Departamento de California.

Se Autorizado previamente por la Ochoava  
Asamblea Departamental para la  
Enajenacion de las Misiones, a fin de  
evitar la total Ruina de ellas y proporcionar al Gobierno recursos que de pronto  
necesita para atender a sus urgencias, y  
en Vista de la Solicitud de los Ciudadanos  
Juan Castaneda, Luis Cuenas y Benito  
Dias en que pretenden comprar la huerta  
de Arboles que es de la Misión de  
Santa Clara con las Casas que le son anexas,  
ubicadas al frente del Establecimiento  
usando de las facultades en que me  
hallo investido por el supremo Gobierno  
Nacional y decreto de la Espresada Honorable  
Asamblea de 13. de Abril Ultimo  
he venido en hacer venta y enajenacion  
perpetua de la Espresada huerta a los  
Referidos Dños Juan Castaneda, Luis  
Cuenas y Benito Dias en la cantidad  
de mil doscientos pesos que han pagado  
y recibido este Gobierno a su satisfaccion  
de conformidad con el abalivo que de  
ella hizo la comision de Misiones. el qd.  
he tenido a bien moderar por el demérito  
en que actualmente se halla la referida  
huerta; Y para la debida constancia  
en todos tiempos doy este documento con  
en formal Escritura que será reconocida  
y aceptada por todas las autoridades civiles  
y militares de la Nación en este y en los  
demás Departamentos y aun por el Gobierno  
general, autorizado debidamente con mi firma  
y la del secretario de mi despacho.

En consecuencia mando que teniendo  
se el presente título por firme y Valido  
se tome Razon de el en el libro qd. corresponde  
y se entregue a los interesados para  
su resguardo y uso que les convenga.

El Juez Respectivo en Vista de este título  
lo ponga en posesion de la mencionada

Titulo

Exhibit B.

Exhibit B.

Exhibit B.

Exhibit B.

Exhibit B.

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Muerta de q. se les pna formal Entrega  
el Encargado del Establecim. a quien se  
libra a Orden al Efecto.

Dado en la Ciudad de los Angeles, en  
papel comun por falta de Sellado a los  
veinte dias del mes de Junio de mil ochocientos cuarenta y seis.

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Pro pio  
Jose Matias Moreno  
Su Int.

Queda tomada Razon de Este superior  
Despacho en el libro Respectivo.  
Moreno

Filed in Office March 3<sup>rd</sup> 1853  
Geo: Kishew Deery

Pio Pico Constitutional Governor  
of the Department of the Californias.

C.

Exhibit

Transmittal  
of  
Title

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Having been previously au-  
thorized by the most Excellent Departmen-  
tal Assembly to alienate 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 Castan  
Eda Luis Armas and Benito Diaz in  
which they proposed to purchase the  
garden of fruit trees of the Mission of  
Santa Clara with the houses pertaining  
to it situated in front of the Establishment  
using the papers in me vested 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 Seniors Juan Castan  
Luis Armas and Benito Diaz for the  
sum of one thousand two hundred dol-  
lars which they have paid and this Govern-  
ment received to its satisfaction in con-  
formity to the valuation 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 that of the Secre-  
tary of My Office,

In consequence I order that  
the present title being held as firm and  
valid shall be made of it in the correspon-  
ding book and it be delivered to the  
person interested for their security and  
other purposes which they may see  
fit.

The proper Magistrate in  
view of this title will put them in posses-  
sion of the aforesaid garden of which  
the person in charge of the Establishment  
will make formal delivery to them to  
whom orders to that effect will be sent

Given in the City of Las Am-  
gels on Common paper for want of  
stamped on the thirtieth day of the month  
of June one thousand eight hundred  
and forty six -

(Signed) Pio Pico.  
(Signed) José Matías Moreno.  
Secretary ad interim.

Order has been taken of this Superior Dis-  
patch in the respective book.

(Signed)  
Moreno.



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Cuenta de lo q<sup>d</sup>. los S<sup>rs</sup>. D. Juan Castañeda, D. Luis Arenas y D. Benito Dias facilitaron al Gob<sup>o</sup> Departamental en pago de las huertas de St<sup>a</sup> Clara y Sr<sup>e</sup> José por la compra que de ellas hicieron.

Exhibit D

No. 2. annex  
to Dep<sup>t</sup>. of  
Ant<sup>o</sup>. M. Pico

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200 Reses @ 5 p <sup>o</sup>	\$1000 <sup>00</sup> -
30 Caballos @ 12 p <sup>o</sup>	360 <sup>00</sup> -
180 Cueros @ 2 p <sup>o</sup>	360 <sup>00</sup> -
100 @ de harina @ 2 p <sup>o</sup>	200 <sup>00</sup> -
12 q. fenej <sup>o</sup> mais @ 12 R <sup>o</sup>	18 <sup>00</sup> -
50. idem papel @ 3 p.	150 <sup>00</sup> -
En plata	942 <sup>00</sup> -
Suma	\$ 3200 <sup>00</sup> -

Sello Cuyo Suma Recibí este Gob<sup>o</sup> no a su satisfaccion. Y para constancia y resguardo de los intereses doy el presente en la Ciudad de Los Angeles @ 2 de Julio de 1846.

Pico  
Filed in Office March 3<sup>rd</sup> 1853

Geo. Johnsen

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*[Faint, illegible handwriting]*

*[Faint, illegible handwriting]*

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E.  
Translation  
of  
Receipt.

Account of the articles which Simons  
Juan Custaneda Luis Armas and  
Benito Diaz furnished to the Depart-  
mental Government in payment of the  
gardens of Santa Clara and San Jose  
for the purchase which they made of  
them -

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200 head of cattle @	\$ 5.00.	\$ 1,000.00
30 horses	" " 12 "	360.00
180 Heids	" " 2 "	360.00
100 Arrobas Flour	" " 2 per arroba	200.00
129. Sempas Maizo	" 1.50	193.50
50. " Trijol	" 3.00.	150.00
In cash -		942.50.
Amount.		\$ 3,200.00

Book Seal  
Which from this Govern-  
ment received to its satisfaction, and in  
testimony and for the security of those interested  
I give this present in the City of Las  
Angeles on the 2<sup>nd</sup> of July 1846.

(Signed)

Filed in Office March 3. 1858.

(Signed)

Pico  
Geo Fisher Secy



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Conste por la presente que yo el abajo fir-  
-mado doy poder amplio bastante a Don  
Benito Diaz p<sup>a</sup> q<sup>d</sup> pueda disponer a su  
justi, de la huerta de Sta Clara esta es la  
parte que en ella me pertenece en propi-  
edad asi mismo le autorizo en virtud de  
este documento p<sup>a</sup> q<sup>d</sup> pueda vender al-  
-quilar, hipotecar, enagenar, temporalment<sup>e</sup>  
-nax. Juan de d p<sup>a</sup> siempre aha tercera parte; en fin hacer  
Castaneda to de ella todo lo que yo mismo pudiera hacer  
Benito Diaz en virtud de mi titulo de propiedad  
Sonoma Abril 5. de 1851.

#11

Power of Atto-  
-ney. Juan de d p<sup>a</sup> siempre aha tercera parte; en fin hacer  
Castaneda to de ella todo lo que yo mismo pudiera hacer  
Benito Diaz en virtud de mi titulo de propiedad

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J. de Castaneda

Testigo  
Don Juan de Campo  
State of California }  
County of Sonoma }  
On this 5<sup>th</sup> day of  
Apr<sup>l</sup> 1851. Before me  
the undersigned County Clerk personally  
appeared. <sup>J. de Campo</sup> personally known to me to be  
the person who signed the foregoing as a Witness  
who after being duly sworn by me says  
that he was present when the foregoing Instru-  
ment was executed and signed by the  
within named Juan Castaneda, that he  
saw the said Juan Castaneda whose name  
is signed to said Instrument sign his  
name to said Instrument as a party there-  
to and that he the Witness subscribed his  
name as a subscribing Witness.

firmado) (M<sup>o</sup> J<sup>o</sup> de Campo  
Sworn to and subscribed to before me the  
said County Clerk of Sonoma County,  
Given under my hand and private seal  
there being no seal of Office yet provided  
at Office this day and date above written

(S<sup>c</sup>) Jno: Hendley Clerk  
County of Sonoma

Translation I know all Men by these presents that  
of Power of Atto- the undersigned give full and sufficient  
-ney. power to Don Benito Diaz to dispose of the  
Landen of Santa Clara as he may please

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That is the third part of it which pertains to me in fee. and I also authorize him in Virtue of this document to sell, rent, mortgage, alienate, temporarily or forever said part and finally to do every thing in it as I myself could do, in Virtue of my ownership.

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Omaha April 5 1857.

(signed) Leon de Casteneda

Witnesses

(signed) Victor Hudson

1 Ch. <sup>W</sup> Ler<sup>as</sup> Camposes

Filed in Office March  
3<sup>rd</sup> 1857.

Geo. <sup>W</sup> Fisher Deery

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F

Dud of  
Assignment412 ND  
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This Indenture Made the fifth day of October Eighteen hundred and fifty between Don Luis Armas of the first part and James M Jones trustee appointed for the purpose hereinafter mentioned of the second part and the several persons creditors endorsers guarantors or sureties of or for the said party of the first part who have executed or shall hereafter execute or accede to these presents within thirty days from the date of these presents of the third part:

Witnesseth that whereas the said party of the first part is at present unable to pay the immediate demands upon him and deems it just and reasonable to secure pay and indemnify the loyal persons parties to these presents in the manner hereinafter mentioned.

Now therefore for the consideration and purposes herein contained and in consideration of one dollar to him in hand paid by the said party of the second part the receipt whereof is hereby acknowledged the said party of the first part doth by these presents grant bargain sell convey assign transfer and set over unto the said party of the second part and his assigns all the real and personal estate property and effects of every description belonging to him the said party of the first part and referred to in the Schedule hereunto annexed and sworn to marked "A".

To have and to hold all and singular the premises herein assigned or otherwise assured or intended so to be by to the said party of the second part his heirs

and assigns to their use and behoof forever. But upon trust that the said party of the second part shall with all reasonable speed sell and dispose of such parts of the said tract property and effects as are of a valuable nature and shall use his best Endeavors to obtain recover and receive such parts of the same as consists of debts or other outstanding interests into his hands and possession and forthwith after deducting and retaining all such costs charges damages Expenses and disbursements as shall be sustained incurred or reasonably due in for or in relation to the execution of the trusts hereof including the costs charges and Expenses of preparing and executing these presents. Then upon trust that the said party of the second part do and shall divide distribute and pay over all the residue of the said trust property to and among all the persons creditors of the said party of the first part who shall be named parties or by letter or in writing signing signify their assent hereunto within said ninety days as hereinbefore presented ratably and in proportion to the amounts due to each of them without any preference or priority and in case there shall be any surplus of the said trust property and effects after fulfilling the said trusts then upon trust that the said party of the second part do and shall cause deliver and pay over the same to the said party of the first part his Executors administrators and assigns -

And the said party of the first part by these presents doth Name constitute and appoint the said party of



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the second part to be his Attorney inrolled with full power of substitution in his name or in the name of the said party of the first part or otherwise howsoever as the case may require. but to and for the trusts herein declared to demand sue for recover and receive the outstanding debts interests trust and property and effects and to institute prosecute or defend all such suits and processes at law or in Equity. and to execute perform and transact all such deeds writings acquittances acts matters and things as shall be necessary or expedient to carry into effect the trusts uses interests and purposes herein declared or contained as fully and effectually as the said party of the first part could do personally if these presents had not been made.

And the said party of the first part doth hereby covenant with the said party of the second part that said party of the first part will at all times promote and forward the speedy receipt and recovery of the debts property and effects aforesaid and ratify and confirm all such acts as shall be lawfully done therein by virtue of these presents and shall and well aid and assist the said trustee in managing the concerns of the said trust estate in the execution of these presents when thereto requested upon being allowed a reasonable compensation for services rendered therein and will execute and perform all such further and other acts deeds matters and things for the further and better assigning and assuring the premises herein before assigned or otherwise assured or intended so to be to the said party of the second part and for

the intents and purposes herein declared as  
 may be reasonably advised or requested.

And it is agreed by and  
 between the parties hereto that the said trustee  
 may at discretion compound any debt or  
 debts due or owing to the said party of the  
 first part and enter into sign and execute  
 any bargain or deed of composition com-  
 promise or assignment of or with any persons  
 indebted to the said party of the first part  
 who shall be or become insolvent or  
 unable to make punctual payment and  
 also may make any such agreement or arrange-  
 ment as shall be deemed reasonable with  
 any persons possessing any security given  
 by said party of the first part upon any estate  
 or other property of or held in by him or by  
 any creditor of his by way of mortgage or  
 pledge for money or with any persons having  
 a lien on any such property by virtue of  
 any attachment, levy, judgment or otherwise  
 in order to procure such estate or property  
 to be exempted from the lien or charge crea-  
 ted therein and also may set all or any  
 part of the said tract property for money to be  
 paid on a future day or on credit or for  
 any security by way of bill of exchange or  
 otherwise as the said trustee shall think  
 expedient and may compromise all matters  
 which may be in dispute or submit the  
 same to arbitration and may sell and  
 convey into money all contingent  
 interests and securities which cannot be  
 immediately enforced with a prospect of  
 advantage and all debts which shall be deemed  
 bad or doubtful or which cannot be collected  
 in a reasonable time and it is further

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in a reasonable time. And it is further  
agreed that the naming of any debt or debts  
in any Schedule hereto annexed shall not  
prevent the parties of the first or second part  
from calling in question or controverting the  
existence or amount of the same or taking  
any course at law or in Equity to have the  
same disallowed or adjusted. And that if the  
demand of any creditor shall have been  
stated as being greater or smaller than it  
really is such creditor shall be entitled to  
the benefit of these presents upon and for  
and only upon and for the amount which  
may be found to be justly due him.

Provided further that  
no person shall be admitted to be a creditor  
under these presents unless he shall within thirty  
days from this date by letter or in writing or  
signing the same duly consent to the same and  
release and discharge the party of the first part  
from any Alliance or remainder which may  
be due said creditor after exhausting the  
property herein conveyed nor shall unless  
he shall have given notice within said  
thirty days of his debt or demand to the  
party of the second part or before a final  
dividend of said trust property under  
the trusts herein declared. nor shall any  
person be admitted a creditor after any one  
or more dividend or dividends shall  
have been made under the trusts herein  
declared. but on condition of his not  
requiring any abatement of or otherwise  
disturbing the dividend or dividends  
made prior to his having given notice  
of his debt or demand. But the consent  
of said creditor or any of them shall be  
necessary to the perfecting of these presents but  
the same shall be perfected by the signing

of the parties of the first and second part and the party of the second part shall distribute the funds arising from the sale of the said trust property to and among the creditors signing or assenting hereto and releasing the residue of their claims as aforesaid or if there be none such then according as he may deem equitable and proper in pursuance hereunto.

And the said party of the second part doth hereby covenant with the said party of the first and with the parties of the third part that said party of the first part shall and well execute and perform the trusts in him hereby reposed to the best of his judgment and discretion. Provided always and it is hereby agreed that the trustee for the time being his Executors or administrators shall not be liable or accountable for more money or effects than he shall receive nor for any loss or damage which may happen thereto except the same shall arise by or through his own wilful default nor for any damage or loss arising from the acts neglect or default of any substitute trustee agent solicitor or attorney which the said party of the second part by and with the consent of the party of the first part may or shall hereafter appoint or employ -

And the said respective creditors parties hereto do and each and every of them for himself and herself severally and respectively and for their heirs and respective Executors administrators partners and assigns doth hereby accept and take

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the Estate and Effects hereinbefore assigned  
in full payment satisfaction and discharge of  
all their respective debts and demands afore-  
said and of all loss or damage sustained or to  
be sustained by reason of any liability afore-  
said and do and each and every of them  
doth absolutely promise release discharge  
and quit claim the said party of the first  
part of and from all demands which they or  
any or either of them now have bear had  
or hereafter may have claim or demand  
against the said party of the first part.

And it is understood that  
any additional corrections and alterations may  
be made in the Schedule hereto annexed  
for the more full and accurate specification  
of the matters and things therein contained or  
intended to be contained.

In Testimony whereof the  
said parties have hereunto set their hands and  
seals the day and year first above written,  
at the City of San Francisco.

Luís Armas,  
J. Adams

Accepted and delivered  
in presence of  
John Gontz.

State of California  
County of Santa Clara

Personally came before  
me Don Luís Armas who is personally  
known to me to be the same whose name  
is subscribed to the above and foregoing  
instrument of writing as having signed the  
same and acknowledged the same to be his  
act and deed for the purposes therein

Continued.

Taken and acknowledged at the  
City of San Jose this 11th day of October  
Eighteen hundred and fifty before me.

J. M. Kildman  
Deputy Judge of  
Santa Clara.

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Filed in Office March 3, 1858.

(Signed)  
Geo. Fisher Secy

---

State of California }  
County of Santa Clara }  
April 2<sup>d</sup> 1851.

G.  
Causy mcl

This Indenture Entered into between  
Benito Dias of the City of Monterey and  
State aforesaid of the first part and  
Joshua N. Redman, John H. Watson and  
Charles Clayton of the County of Santa Clara  
and State aforesaid of the other part.

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Witness that the party of  
the first part for and in consideration of  
the sum of fifteen hundred dollars in  
hand paid does hereby sell and quit claim  
to the parties of the second part all his  
right title and interest in or to the or-  
chards and vineyards lying and being in  
the County of Santa Clara State aforesaid  
as well known fully appurtenant or grants  
from Pio Pico Governor of Upper California  
bearing date the thirtieth day of June in the  
year Eighteen Hundred and forty six. And  
the party of the first part warrants against  
himself and all others claiming by through  
or under him.

In Witness whereof the said  
Benito Dias has hereunto set his hand  
and seal the day and year above written

Benito Dias *[Signature]*  
Signed Sealed and  
delivered in presence of  
James C. Cerame. *[Signature]*

State of California }  
County of Santa Clara } es

On this 2<sup>d</sup> day of April  
AD 1851 personally appeared before me

a Notary Public in and for said County Benito  
 Dias satisfactorily proved to me to be the  
 person described in and who executed the  
 foregoing Conveyance by the oath of James  
 Le Grando a competent and credible witness  
 for that purpose and by me duly sworn and  
 in the said Benito Dias acknowledged  
 that he executed the same freely and voluntarily  
 for the uses and purposes therein mentioned

In Testimony of which I have  
 hereunto set my hand and  
 Official Seal on the day &  
 year above written.

William L Smith  
 Notary Public.

Filed in Office March 3. 1853.  
 (signed)

Geo Fisher Secy.

---



State of California }  
 County of Sonoma } April 7, 1851.

This Indenture Entered  
 into between Juan Castaneda by his Attorney  
 in fact Benito Deus of the County of Sonoma  
 and State aforesaid of the first part and  
 Joshua W. Raman, John H. Watson and Charles  
 Clayton of the County of Santa Clara and  
 State aforesaid of the second part.

"B"  
 Carvajal.

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Witnesseth That the party  
 of the first part for and in consideration of the  
 sum of Two thousand Dollars to his satisfaction  
 paid the receipt whereof is hereby fully acknowledged  
 doth duly hereby bargain sell quit claim and  
 convey unto the parties of the second part  
 all his right title and interest in and to the  
 orchards and vineyards lying and being in  
 the County of Santa Clara and State aforesaid  
 as will more fully appear by deeds or grants  
 from Sir Pier Governor of Upper California  
 bearing date the thirtieth day of June Eighteen  
 hundred and forty six and the party of the  
 first part doth hereby warrant unto the  
 parties of the second part against himself  
 and all others claiming by through or under  
 him.

In Witness whereof the said  
 Benito Deus Attorney in fact for  
 the said Juan Castaneda has  
 hereunto set his hand and seal  
 at Sonoma City the day and  
 year above written.

J. de Castaneda (Seal)  
 By his attorney in fact  
 Benito Deus (Seal)

In presence of  
 James O. Crane.

John Hendley,  
Notary.

State of California  
County of Sonoma

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On this 7th day of April  
A.D. 1851 Before me John Hendley County  
Clerk of Sonoma County personally appeared  
Benito Dias Attorney in fact for Juan  
Castaneda who is personally known to me to  
be the person described in and who executed the  
foregoing Instrument who acknowledged to  
me that he executed the same freely and volun-  
tarily for the uses and purposes therein mentioned.

*[Signature]*

Given under my hand and private  
seal this 7th day of April in the  
City of Sonoma this day and  
date last above written.

John Hendley Clerk

Filed in Office March 3. 1858.

(signed)

Geo Fisher Secy

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Know all men by these presents that whereas Joshua W Redman Attorney in fact of James McCombs Assignee of Don Luis Armas acting under and by virtue of the power of Attorney did on the first day of February 1851 and at various times thereafter in the State Journal a Newspaper published at San Jose that he would sell at public auction at San Jose on the first Monday of April 1851 for the benefit of the creditors of Don Luis Armas certain property of said Armas lying in the State of California and whereas in pursuance of said advertisement the said Joshua W Redman did on the said first Monday of April 1851 at the hour of 2 o'clock P. M. proceed to sell the said property publicly before the Court house door at San Jose whereupon James F Red became the last and highest bidder for a portion of said property of Don Luis Armas to wit - One third part of the orchard of fruit trees of the Encomienda of Santa Clara measuring about four hundred varas square with houses and appurtenances known being the same heretofore granted by Don Pedro to Juan Castaneda Luis Armas and Benito Diaz (as is shown by the original title hereto annexed) and the said James F Red having offered therefor the sum of Sixty dollars which being the last and highest bid the said Joshua W Redman then and there knocked down and adjudicated said property to the said James F Red who thereupon according to the terms of said sale paid to the aforesaid James McCombs twenty dollars in cash and affixed his obligation for forty dollars payable

after thirty days.

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Now therefore by these presents I the aforesaid James Mc Jones for the consideration aforesaid and the sum of twenty dollars cash in hand to be paid by the said James F Red and his obligation executed as aforesaid I the said James Mc Jones assignee of the said Don Luis Armas do hereby bargain sell and convey and quit claim unto the said James F Red his heirs and assigns all the right title and interest of the said Don Luis Armas and of myself as assignee aforesaid in and to the herein before described and third part of the said orchard and the appurtenances thereof to have and to hold the same unto the said James F Red his heirs and assigns forever free from all incumbrances created by myself as assignee as aforesaid and for more particular specification of the property herein conveyed I annex the original title of Don Luis Armas thereto as part of this deed.

In Testimony whereof I have hereunto set my hand and seal as assignee of the above mentioned Don Luis Armas at San Jose the twenty fifth day of April 1851.

J. Mc Jones Assignee of Don Luis Armas.

The words "to me" interlined in the 24th line page 1st were made before signed.

State of California }  
County of Santa Clara } ss.

On this 25th day of April 1851 personally appeared before me a

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Notary Public in and for the said County  
J. M. Jones known to me to be the person  
described in and who executed the foregoing  
instrument who acknowledged to me that  
he executed the same freely and voluntarily and  
for the purposes and uses therein mentioned.

Given under my hand  
and private seal there being  
no official seal yet provided.

*[Handwritten signature]*

Francis Hunt  
Notary Public.

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Filed in Office March 5, 1858.

(Signed)  
Geo Fisher Secy

Affidavit

To the Honorable the Board of U. S  
Land Commissioners for the adjudication  
of private land claims in the State of  
California.

Ashua H. Redman states  
that his claim to the Orchard of Santa Clara  
situated in Santa Clara County is now held  
under advisement by the Board of U. S Land  
Commissioners for the adjudication of private  
land claims in the State of California. that as  
evidence of his right to said Orchard he has  
filed before the said Board the original grant  
of the Orchard of Santa Clara made in the  
year 1846 by Pio Pico then Governor of the  
Department of the Californias to Benito Diaz  
and Juan Castaneda under whom he claims  
the said Orchard and has also filed before  
the said Board the original receipt of the  
said Pio Pico then Governor as aforesaid from to  
said grantees for the purchase money of the

said Orchard and that both of said papers are now held and retained by the said Board.

That a suit has been commenced in the District Court of the Third Judicial Circuit District for the County of Santa Clara against John Redman by one John Hobbs styling himself "The Roman Catholic Priest and Pastor of the Mission and Church of Santa Clara," to recover of him the sum of possession of the said Orchard. That he is advised by Counsel that the original papers above named are necessary and material to him in making his defence in said suit -

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Your petitioner therefore prays that he be permitted to withdraw the said original papers by leaving certified copies thereof in the possession of the said Board.

J. W. Redman.

State of California }  
Santa Clara County } ss.

Personally appeared before me Joshua W. Redman who subscribed the foregoing petition and made oath that the matters and things therein set forth are true to the best of his knowledge and belief.

In witness whereof I have hereunto set my hand and affixed the seal of the District Court of the Third Judicial District for the County of Santa Clara in the State of California this the twenty third day of October A.D. 1854.

*[Signature]*

John B. Henson Clerk  
Dist. Court Sta Clara County

Filed in Office Nov 7. 1854.

(Signed) Geo Fisher Secy

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No 428 754.

J. W. Redman et al }  
T. O. Larkin.

Motion

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It is hereby moved that the  
Case 428 754 which has been submitted to the  
Board be restored to the docket and ordered  
that new and additional testimony be taken  
on the part of the Government.

Louis Blauding  
Asst. Law Agent.

Nov 28 1854.

Filed in Office Nov 28. 1854.

(Signed)

Geo Fisher Secy

No 442.

J. W. Redman Claimant.

Affidavit

J. Alexander Forbes being duly sworn  
deposes and says that he was well ac-  
quainted with Sr Pico during the year  
1846 that said Pico acting Governor of  
California during that period was at  
Santa Barbara in California on the 30th  
day of June 1846 and that said Pico  
remained at Santa Barbara without  
leaving said place till the 3<sup>o</sup> day of July  
1846. That he believes said Pico left  
Los Angeles for Santa Barbara on the  
14th day of June 1846 and did not return  
to Los Angeles till after the 2<sup>o</sup> day of  
July 1846.

for Mr Forbes.

Subscribed and sworn to  
before me this 27<sup>th</sup> day of November 1854.  
Alphus Seelye.

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Filed in Office Nov 28. 1854. *Commissary*  
(signed) Geo Fisher Secy

No 942. J. W. Redman Plaintiff,  
U. S. Board of Land Commission

*Affidavit*

Rolando Diaz says on oath that  
he has examined the grant filed in this  
case bearing date June 30<sup>th</sup> 1846 and the  
receipt dated July 2<sup>nd</sup> 1846. Each signed by  
Pico former Governor of California. that  
he was present at the writing of said document  
that they were written by Juan Castaneda  
at the House of Luis Armas in the month  
of August 1846 about eight days before  
Commodore Stockton landed Los Angeles  
That affiant was not present at the  
signing of said document, that he saw  
them the said 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.

Rolando Diaz



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Subscribed and Sworn to  
before me this 4th day of  
December 1854.

Alphus Felch  
Commissioner

Filed in Office Dec 6. 1854.

(Signed) Geo Fisher Secy

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Affidavit

No 712.

J. W. Radman et al Claimants &  
vs 754.

J. O. Larkin Claimant.

Both for the Archard of  
"Santa Clara".

Before the U. S Board of Land Com-  
missioners.

I H. McKim U. S Law agent  
Louis Blauding U. S Associate Law Agent  
Each for himself says 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 said affida-  
vits and that if these cases shall be returned  
to the docket for further testimony he  
expects to procure the evidence stated  
in said affidavits and introduce it in  
said cases.

I. H. McKim.  
Louis Blauding.

Subscribed and Sworn to

before me by both of said  
Affiants at San Francisco  
on this 6th day of December  
A.D. 1854.

Peter Gott Commissioner

Filed in Office Dec 6. 1854.

(Signed)

Geo Fisher Secy

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Stipulation

It is hereby agreed that the deed  
of J. H. Watson to J. H. Ridman and  
Ch Clayton dated 12 August 1852 and the  
deed of Joseph H. Johnson Sheriff of Santa  
Clara County State of California to Ch  
Clayton and J. H. Ridman may be filed  
and considered as readuced in the claim for  
the Orchard of Santa Clara being No 742  
on the docket of the U. S Land Commission  
for California wherein said J. H.  
Ridman & ab are claimants -

Louis Blauding

U S Ass Law Agent

Filed in Office March 22. 1855 -

(Signed)

Geo Fisher Secy

Deed

For and in Consideration of the  
sum of one thousand dollars to me in  
hand paid by J. H. Ridman and Chas  
Clayton the receipt of which is hereby  
fully acknowledged and confessed I John  
H. Watson of the County of Santa Clara

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and State of California do hereby transfer and set over to J. M. Redman and Charles Clayton of said County and State aforesaid and hereby forever grant bargain and sell and quit claim all my right title and interest acquired by virtue of a deed from Donato Dias and Leastinas to said Wm. Redman and Clayton which will more fully appear by reference to the Records of Santa Clara County being two thirds of the Orchard of Santa Clara Mission.

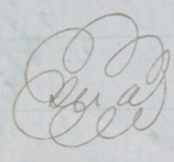
To have and To hold the same unto them the said Redman & Clayton and unto their heirs and assigns forever free from the claim or claims of all and every person claiming the same by through or under me the said J. H. Watson.

In Witness whereof I have hereunto set my hand and seal this 12th day of August AD 1852.  
Jno H Watson.

Attest.  
Edw<sup>d</sup> Leavisky.

State of California  
County of Santa Clara 3 p.

On this 13th day of August AD 1852 personally appeared before me the undersigned John H Watson personally known to me to be the person described in and who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.



Given under my hand and private seal having no seal at Office yet provided the

day and date aforesaid.

J. M. Murphy  
County Clerk.

Filed in Office March 22, 1853

(Signed)

Geo Fisher Secy

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To all to whom these presents shall  
come.

I Joseph M. Johnson Sheriff  
of the County of Santa Clara, State of  
California send greeting;

Whereas by virtue of a writ  
of Execution issued by Thomas L. Bermento  
Esq a Justice of the Peace of the Township  
of San Jose in favor of William T. Wallace  
against James F. Rud dated on the 16th  
day of June A.D. 1852 to the said  
Sheriff directed and delivered Comman-  
ding him that of the goods and chattis of  
the said James F. Rud if sufficient, if not  
then of the Real Estate of the said Rud,  
he should cause to be made certain moneys  
in the said writ specified and whereas be-  
cause sufficient goods and chattis of the  
said last named person could not be  
found whereof he the said Sheriff could  
cause to be made the moneys specified in  
the said writ he the said Sheriff did  
in obedience to the said command lay on  
take and seize all the interest of the said  
James F. Rud in and to the Santa Clara  
Imperial Orchard so called situated in the  
County of Santa Clara with the appurtenances  
and did on the eighth day of July  
A.D. 1852 sell the said premises at public

Dall

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vendue at 12 O'Clock Pm of said day in front of the Court House in the City of San Jose he having first given notice of the time and place of such sale by advertising the same according to law at which sale the said premises were struck off and sold to Charles Clayton and J W Ridman by their Agent A S Jones Jackson he the said Jackson Agent as aforesaid being the highest bidder for the sum of One hundred and fifty Dollars that being the highest sum bidden for the same.

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Now this Indenture Witnesseth that I Joseph W Johnson the Sheriff as aforesaid by virtue of the said writ and in pursuance of the Statute in such case made and provided for and in consideration of the sum of money above mentioned to me in hand paid as aforesaid the receipt whereof is hereby acknowledged have granted bargain and sold and by these presents do grant bargain and sell unto the said Charles Clayton and J W Ridman their heirs or assigns all the interest of the said James F Reed of jr and to the said premises known as the Santa Clara Mission Archard situated in the County of Santa Clara together with the appurtenances therunto belonging To have and To hold the said above mentioned and described premises with the appurtenances unto the said Charles Clayton and J W Ridman their heirs or assigns forever as fully and absolutely as I Joseph W Johnson the Sheriff aforesaid can may or ought to by virtue of the said writ and of the Statute in such case made and provided grant bargain and sell the same.

In Witness whereof I the said Sheriff have hereunto set my hand and seal this day and year to wit the tenth day of July A.D. 1853.

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The word "Et" in the second line from the top of 1st page and also in fifth line of second page Erased before signing -

J. W. Johnson  
Sheriff of Santa Clara Co

State of California  
County of Santa Clara Es

On this August 22, 1854.  
personally appeared before me a Notary Public in and for said County Joseph W. Johnson known to me to be the person described in and who executed the foregoing deed of conveyance who acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein contained.

*[Signature]*

Given under my hand and Notarial seal at said County, the day and year last written.

L. Archer  
Notary Public

Filed in Office March 22 1853.

*[Signature]*  
Geo Fisher Secy



of the Missions enumerated in the last mentioned document.

The Order ~~above~~ referred to is an official Document duly authenticated by the Minister of Justice & Public Instruction and is preserved as Constituting a part of the public Archives of the Department. Its receipt by the Governor is shown by the record of the proceedings of the Departmental Assembly of the 15th of April 1846 in which being it was personally Communicated to that body by the Governor; It was consequently as Obligatory on him as any of the other Orders and Decrees of the Government which formed the basis of this Authority to act in the premises, and in the authentic shape in which it came before us, we consider that we are as much bound to notice judicially as we are other Orders and Decrees of the Government of a similar Character found in the books and which we have always regarded as authentic in the cases to which they apply. In deciding this case therefore and others coming within the purview of this Order we shall take it into our consideration whether it specially files and make a part of the record or not.

The Effect of this Order was fully discussed in the Opinion of the Board advanced in Case No 110 *Annes Pico et al vs The United States for the Mexican Lands of San Jose*, in which it was shown that the proclamation of Gov. Micheltorene was intended to carry out the decree of the Mexican President of the 17th of November 1840 - the purpose of which was



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in our opinion to set apart and dedicate  
to the use of the Catholic Church certain  
portions of the Lands belonging and appur-  
tenances formerly used by the Missions and  
that among these the Orchards and Gardens  
were specially named as constituting a  
portion of the property to be dedicated to religious  
purposes. Santa Clara being one of the  
Missions named in the proclamation as  
given up to the Missions, the Orchard  
of that Mission received as a necessary  
consequence be embraced in the prohibition  
against Alienation contained in the Order of  
the Government of the 14th of Nov. 1845.

In this view of the Subject the Govern-  
or in making the grant received on in this  
Case not only transgressed his powers but  
acted in direct Opposition to the Express  
Order of the Government from which he  
received his Authority. Now the Subject  
has act was therefore illegal and void  
and the grant a nullity.

A decree rejecting the claim will be  
entered —

Filed in Office December 18<sup>th</sup> 1855  
Geo. Fisher Secy

Decree

L M Freeman et al }  
vs }  
The United States }

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

Alpheus Selch

R. Aug. Thompson

Commissioners

Silch in office Dec. 18' 1855

Geo. Fisher Secy

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

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

I, *George Fisher* Secretary to  
the Board of Commissioners to ascertain and settle the Private  
Land Claims in the State of California, do hereby certify the  
foregoing *one hundred and one* pages, numbered from  
1 to 101 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, Case No. 742 on the Docket of the said Board,  
wherein

*A. W. Redmond, et al,* are  
the Claimant against the United States, for the place known by  
the name of *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  
*Eleventh* day of *February*  
A. D. 1856, and of the Independence of the  
United States of America the *seventy-eighth*

*Geo. Fisher*  
Secy



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U. S. DISTRICT COURT,

District of California.

No. 412 + 412

THE UNITED STATES,

vs.

*J. W. Edmund et al.*

TRANSCRIPT OF THE RECORD

FROM THE  
BOARD OF U. S. LAND COMMISSIONERS.

In Case No. 74

Filed, February 15, 1856

*J. A. Monroe,  
Clerk*

Clerks Office of the District Court of the United  
States for the ~~Southern~~<sup>Northern</sup> District of California

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Whereas the commission constituted for the purpose of ascertaining and settling private Land claims in the state of California by the act of Congress of the United States of America approved on the 3<sup>rd</sup> March 1851. entitled "An Act to ascertain and settle the private Land claims in the state of California" did on the 18<sup>th</sup> day of December 1855 by their decision of that date. decide against the claim presented by the undersigned to the said Commissioners

Which claim is No. 742 on the docket of claims before said Board. and is for land lying in the said ~~Southern~~ District. and the said claimant being desirous that the said District Court should review the said decision. Now hereby files this notice in the said Clerks Office of his intention. to prosecute an appeal. as is provided by the 12<sup>th</sup> Section of "An act making appropriations for the civil and diplomatic expenses of the government for the year ending the 30<sup>th</sup> of June 1853. and for other purposes" which said Act was approved on the 31<sup>st</sup> of August 1852

To \_\_\_\_\_  
John A Monroe  
Clerk of said Court

J. W. Redman  
Chas Clayton  
Mr F Watson  
Mr Augustus Redman

No: 412

United States District  
Court Northern District  
of California

J. W. Redman sal

vs

The United States

Notice of intention  
to prosecute Appeal

Filed July 5, 1856

Charles

Deputy.

UNITED STATES DISTRICT COURT,  
Northern District of California.

J. W. Redman & al.

San Francisco, April 2<sup>d</sup> 1857

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The United States

ON this day, before

*L. A. Moore*

a

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

*Coyatano Arayas*

a witness produced on behalf of the

*Claimant*

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

*John M*

a sworn interpreter

PRESENT:

*Thronton & Williams for  
Claimant & U.S. Dist Atty -*

QUESTION BY

*Clément's Counsel*

*What is your name age occupation  
and place of Residence?*

*Answer My name is Coyatano  
Arayas. and live San Barera-ben-  
tura and am 32 years of age.*

*In the year 1846 I was an Asst. Clk.*

*In the <sup>office</sup> of Gov Pio Pico.*

*2 Look at "Exhibit B No 1 annexed to  
deposition of Answered 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.

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The writing is the hand writing of Don Juan Castañeda who is now dead. I have seen it before, having had it in my possession. The paper produced was signed in Santa Barbara, in ~~July~~ ~~1846~~, the Governor being there at that time and was sent to me in Los Angeles and I rec'd it about the 3<sup>d</sup> or 4<sup>th</sup> of July <sup>1846</sup>. It pertained to business of my father, and Castañeda being a particular friend of my father, the paper was sent to me with instructions to retain it in my hands till Castañeda come to Los Angeles from the upper Country. Castañeda come down and I immediately delivered it to him. I know of my own knowledge the document was signed before the 7<sup>th</sup> of July 1846. I am the son of Louis Arroyo one of the grantees. I have no interest whatever in this claim. My father has sold it all.

Cross-Ex. I know I received the paper on the 4<sup>th</sup> of July on account from the fact that we had a celebration that day in Los Angeles, not on acct. 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



the vizier - I recollect so well  
because I was in church and was

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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 Lord Commissioners, 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 in-  
terested. my father was not there  
he was in the upper country & a  
few days after he arrived in Los  
Angeles. Beneto Dias was not  
there, he was also in the upper  
Country - Castañeda was also in  
the upper country. I did not re-  
quest 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

Captain Arroyo

Sum & Subscribed

before me this 3<sup>d</sup> day of  
April 1857

Geo. A. Moore

U.S. Comr. in Ch.

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PAGE 104A

No 412

U. S. District Court.

J. W. Redmond *et als.*

— Case —

The United States.

Deposition of  
Cayetano Arenas.

Filed April 2, 1857,

W. B. Chevers  
Deputy.

Ministerio  
de Relaciones Exteriores,  
Gobernacion y Policia.

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R. y P. el dia  
19. y R. a  
los Juggados  
1.º y 2.º.

Pro Pico Gobernador Constitucional  
del Departamento de Californias, á  
sus habitantes, sebed; Que por el  
Ministerio de relaciones exteriores Gober-  
nacion y Policia, se me ha dirigido  
el decreto que sigue;

El Exms. Sr. Presidente interino de la  
Republica se ha servido dirigirme el  
decreto que sigue.

„Manans Pando y Arrillaga,  
General de Division y Presidente interino de  
la Republica Mexicana, a los habitantes  
de ella, sebed; Que considerando que  
por el estado en que se encuentra la  
patria amagada de una guerra extranjera,  
é invadida una grande y preciosa  
parte de su territorio, es llegado el  
caso de obrar con la mayor actividad  
y energia para repeler las mas injustas  
de las agresiones, recuperar el territorio  
usurpado y conservar el lustre y decoro  
de la Nacion; y teniendo presente que  
para lograr tan grandiosos objetos,  
es de absoluta necesidad afeguar el  
orden y la paz interior; usando de las  
facultades que me concede la cuarta  
de la adiciones hechas en este Capital  
en el 2.º de Enero del presente año, al  
Plan proclamado en San Luis Potosi, he  
tenido á bien decretar lo siguiente,  
Art. 1.º El Gobierno nombrará los  
Gobernadores de los Departamentos sin

sujitarse á propuesta de las Asambleas por hallarse  
la Nación las circunstancias extraordinarias de que  
habla el final de la facultad 17<sup>a</sup> del Art. 134 de las  
Bases orgánicas

2.º En los Departamentos en donde por oposición  
al actual orden de cosas se hallen disueltas las  
Asambleas, los Gobernadores respectivos nombraran con  
aprobacion del Supremo Gobierno las personas que  
estimen á propósito para formarlas, por no ser  
justo ni conveniente que los Departamentos carezcan  
de los importantes servicios que deben prestarles esas  
corporaciones.

3.º Con igual objeto se facultó á los Gobernadores  
para organizar los Ayuntamientos en los puntos donde  
estuvieren disueltos.

4.º Se recuerda á los Gobernadores de los Departa-  
mentos para su puntual observancia la circular  
de 24 de Diciembre del año proximo pasado, en  
que se les transmitió la amplificacion de facultades  
concedidas al Ejecutivo por el Decreto del Congreso,  
fecha 21 del mismo, conforme al art. 198 de las  
Bases orgánicas

5. Se facultó á los Gobernadores de los Departa-  
mentos para que en casos extraordinarios obren  
espedidamente, y con la debida justificacion para  
salvar los grandes intereses de la independencia é  
integridad del territorio nacional y para asegurar  
la tranquilidad y el orden público, sin los cuales  
no pueden sostenerse aquellas inestimables bienes."

Por tanto, mando se imprima, publique, circule  
y se le dé el debido cumplimiento. Palacio Nacional

de Mexico, 13 de Marzo de 1846. — Mariano  
Paredes y Arrillaga. — A. D. Joaquin Maria  
Castillo y Lanzas."

Y se lo comunico a V. para su inteligencia  
y fines convenientes.

Dios y libertad, Mexico 13 de Marzo de 1846.

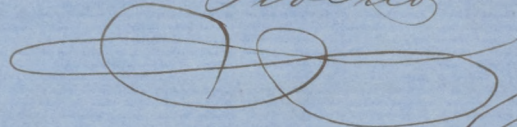
Castillo Lanzas

C. E. Gobernador del Depto de

California.

Y para que llegue a noticia de todos mando  
se publiquen por bando en todos los Pueblos  
del Departamento, se circule a quienes corresponda  
y se fije en los parages publicos acostumbrados.  
Dado en el Puerto de Santa Barbara a 4 de  
Julio de 1846.

J. P. Pico



José Matias Monrís

Seco.

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

J. A. Mandeville Surveyor General of the  
United States for the state of California, and  
as such having in my office, and in my  
charge and custody, a portion of the Archives

of the former Spanish and Mexican Territory or  
Department of Upper California, by virtue of the  
power vested in me by law do hereby certify that  
the three preceding pages numbered from one  
to three inclusive, exhibit a true and accurate  
copy of an original document on file in said  
archives.

In testimony whereof I have  
hereunto signed my name officially  
and caused my seal of office to  
be affixed at the City of San  
Francisco this                    day of  
January A.D. 1858.

W. S. Barlow for California

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No: 412

Page of 13<sup>th</sup> March 1826

Ex. A

J. W. Redman et al

of

The United States

Decree of Mexican  
Government

Filed Jan'y 14, 1858,

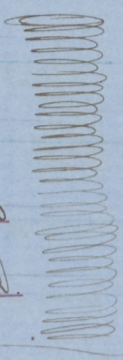
W. A. Chivers,  
Deputy.

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Office  
of  
External Relations  
Government of Chile



Pro Vico constitutional Governor  
of the Department of the Cali-  
fornias to its inhabitants, be  
it known that from the  
office of the Minister of external  
relations, government and police  
has been directed to send the  
following decree.

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Desp. of the 10th  
day and 10th  
the Juzgado  
de 1<sup>o</sup> and 2<sup>o</sup>

His Excellency the President ad interim  
of the Republic has been pleased to  
direct me the following decree,  
" Mariano Paredes y Arrillaga,  
General of Division and President ad  
interim of the Mexican Republic, to  
its inhabitants be it known, that  
in consideration of the state in  
which the country finds itself, threaten-  
ed with a foreign war and a large  
and valuable portion of its territory  
invaded, the occasion for working  
with the greatest activity and energy,  
has arrived, to recover the usurped  
territory and to preserve the glory and  
honour of the Nation; and recollecting  
that in order to attain such grand  
objects it is of absolute necessity to  
secure the internal order and peace;  
using the powers conceded me by the  
Fourth of the additions, made in  
this Capital on the 2<sup>d</sup> of February  
of the present year to the plan  
proclaimed in San Luis Potosi, I have

seen fit to enact, the following, —  
Article 1<sup>st</sup>. — The Government shall appoint the  
Governors of the Departments, without subjecting  
them to a nomination by the Assemblies,  
on account of the Nation finding itself  
in the extraordinary circumstances mentioned  
in the 17<sup>th</sup> clause, of the Article 134 of  
the organic Laws. —

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PAGE 112

2<sup>d</sup> — In the Departments in which by  
opportunity to the present order of things, the  
Assemblies are found dissolved, the respective  
Governors shall appoint with the approbation  
of the Supreme Government, the persons  
whom they may esteem fit to form them  
it being neither just or convenient that  
the Departments should stand in need  
of the important services, which these  
bodies should render them. —

3<sup>rd</sup> — For the same end the Governors are  
authorized to organize the Ayuntamiento  
at the places where they shall have  
been dissolved. —

4<sup>th</sup> — The Governors of the Departments  
will remember with punctual observance  
the circular of the 24<sup>th</sup> of December of  
the year last past, in which was  
transmitted to them the extinction of  
the powers conceded to the Executive by  
the Decree of Congress, date 21<sup>st</sup> of the  
same month, in accordance with  
Article 198 of the organic Bases. —

5<sup>th</sup> — The Governors of the Departments

are empowered, in order that in extraordinary cases they may work expeditiously and with due justification, in order to save the great interests of the independence and integrity of the National territory and to secure tranquility and public order, without which those inestimable benefits can not be sustained.

Therefore I order that it be printed published and circulated, and that full compliance be given it. — National Palace of Mexico March 13<sup>th</sup> 1846. — Mariano Paredes y Arrillaga — To Don Joaquin Maria Castillo y Lanzas

— And I communicate it to you for your intelligence and necessary ends.

— God and Liberty, Mexico March 13<sup>th</sup> 1846.

Castillo Lanzas

His Excellency the Governor of the Department of the Californias, —

— And in order that this may reach the notice of all, I order that it may be published as a decree (bando) in all of the towns of the Department, that it may be circulated to whom it corresponds, that it be fixed in all the public places.

— Given at the Port of Santa Barbara, July 4<sup>th</sup> 1846. —

P. Pico.

Joaquín María Moreno  
Srio

13 March 1866

No: 412

J. W. Redman et al's

vs

The United States -

Translation of Ex. A

Filed July 14, 1858,  
W. H. Chevers,  
Deputy.

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Ministerio  
de  
Guerra y Marina

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Sección de Operaciones  
Principal

E. S.

M. S. Comand. G. B. de California de go  
by lo sigte

"Las preparativas que hacen los Estados Unidos, y la aproximacion de sus fuerzas navales a nuestras puertass, no dejara duda de q. la guerra con aquella potencia está para romperse, y como el E. S. Prudente int. está decidido a defender los derechos de la Nación quiere que en todos los puntos de la Republica en que se presente el enemigo se haga una defensa arrojosa, y capaz de dar honor y gloria al Párrido Nacional. Al efecto mientras que el Supremo Gobierno proporciona a V. S. los auxilios convenientes, espera de su patriotismo y lealtad que dictará las providencias que juzgue oportunas para la defensa de un Depart. Con cuyo objeto queda V. S. y el Sr. Col. facultados ampliamete" Y tengo el honor de de advertirle a V. C. para su conocimiento esperando que por su parte no perdonara medio para conservar ileso los derechos de la patria

Deo y libertad Mexico

Marzo 10 de 1846

Tornel

E. S. Comand. del Depart.  
De California

Es copia fiel de su original que queda en mi poder y a que me remito.

Angels September 27 de 1852

Ped. Peñ

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PAGE 116

I certify the foregoing to be a true and correct copy of the original in possession of the author which copy I have compared with the original

Office of the Board of  
Land Comm. for Cal.  
Angels Sept. 27' 1852

Geo. Foster Secy

No 412

Journal of Peter  
Chapin March 1846

J. W. Redman Esq

to  
The United States

Secree of Mexican  
Government Ex B

Filed July 14, 1858.

W. A. Church,  
Depty.

Ministero

E. J.

de  
Guerra y Marina

To the Sr Comandante General of California

I say to day that which follows -

Sec.<sup>o</sup> of Principal  
Operations

"The preparations that are being made by the United States, and the approximation of her naval forces to our ports, leave no doubt that a war is about to break out with that horror, and as His Excellency the President ad interim, is determined to sustain the rights of the nation, he desires that in all the ports in which the enemy may present themselves, there may be made a vigorous defence, such as will redound to the honor and glory of the National Flag - To this end, while the Government will give you the necessary aid, it is hoped that your fidelity and patriotism, will dictate such measures for the defence of the Department, as you may judge most oportune; to which end you, and the Sr Governur remain amply empowered."

I have the honor to communicate <sup>to you</sup> hoping that you, on your part, will omit no means for preserving unimpair'd the rights of the Country.

God + Liberty - Mexico March 10<sup>o</sup>. 1846

Jornal.

To the Governur of the  
Department of the California

This is a faithful copy of its original that remains in my possession and which was committed to me

Angels. Sept. 27. 1852

Pio Pico

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No 412  
10<sup>th</sup> March 1858

Joyce's order  
J. W. Newman & Co

as

The United States

Translation of  
Ex. B —

Lidid July 14, 1858,  
W. F. Chivers,  
Deputy.

Gov. Político  
de California

412 ND  
PAGE 120

Esmo Sr

Luego que recibí la Suprema  
orden de once de Mayo del Cor<sup>to</sup>  
Año, en la que se me comunica la  
hacienda y guerra provabilidad de guerra entre nuestra  
Nacion y la de los E. U., mande  
formar regimientos de auxiliares  
defensores de la Patria; y como  
puede llegar el caso que estos se  
pongan sobre las armas, seria  
conveniente que V. E. en uso de sus  
facultades establezca arbitrios  
con que sostenerlos, pues no hay  
con que contar con los fondos del  
Eerario, por lo esauisto en que  
siempre se encuentra,  
Protesto á V. E. mi Distinguida con-  
sideracion.

Dios y Libertad Agosto 20. de 1844

Manuel Michelena

Esma Asamblea  
Departamental

Exma. Asamblea.

La Comisión especial nombrada para dictaminar con respecto a los arbitrios q<sup>se</sup> se expresan en la Superior nota del Gobierno Departamental fha. 20 del corriente, para el sostenimiento de las fuerzas auxiliares formadas por el mismo a consecuencia de las probabilidades que hay de guerra entre nuestra nación y la de los Estados Unidos del Norte, espone: que ha meditado con la mayor atención y cuidado sobre este particular, y que a pesar de sus continuas reflexiones en buscar los medios de establecer otros arbitrios no los encuentra; mas considerando las críticas circunstancias en que se encuentra el país amenazado a perder, nada menos, que sus derechos, y libertad, teniendo presente la suma escasez del erario nacional, y la necesidad de buscar medios para su seguridad y defensa, los que la Comisión encuentra, únicos y seguros p.<sup>o</sup> proporcionados Recursos al Gobierno, p.<sup>o</sup> este obje-

to, son las Misiones, tanto por que Camenan  
a su total destruccion los q<sup>os</sup> existen aun me  
dianamente paradas, quanto por q<sup>ue</sup> deben con  
siderarse como mas propiedades de la Nac-  
on, gratificando, de ellas mismas, competent-  
mente a sus respectivos neq<sup>ue</sup>sitos por el d<sup>o</sup>  
que les asista, pone a la deliberacion de V. E.,  
los articulos siguientes,

1<sup>o</sup> Podrá el Gobierno Superior del Departa-  
mento, poner en venta, hipotecas o arren-  
dar las fincas raices y terrenos de labor  
de las Misiones de la alta California com-  
prendidas en la estension desde S<sup>ta</sup> Diego  
hasta Sonoma, y disponer para atender  
a los gastos de la guerra, del sobrante  
de su valor pagadas que sean, de preferen-  
cia, sus respectivos deudas legales,

2<sup>o</sup> Se exceptuan del art. anterior, la Misi-  
on de Sta Barbara que subsistirá como  
Palacio Episcopal, atendiendo a su neq<sup>ue</sup>sidad  
la de Sta Ines para colegio, instruccion  
y estudios mayores de la juventud Cal-  
iforniana, y alguna que otra que reservan  
el Gobierno para sembrar nacionales ne-  
cesarias a la subsistencia de las M<sup>is</sup>o-

mas -

- 3<sup>o</sup> El gobierno dispondrá el tiempo, modo y forma en que deba verificarse dha. venta, hipoteca, o arriendo y Reglamentará el reparto prudente de los bienes Semovientes, como demas utenciones, entre los Vecinos respectivos, dandoles tierras
- 4<sup>a</sup> El Gobierno podra excofir irremisible y efectivamente los intereses q.<sup>e</sup> algunos particulares adeudan a dhas Misiones y dispondra de ellos p.<sup>a</sup> el mismo fin que el sobrante de que habla el art.<sup>o</sup> 1<sup>o</sup>
- 5<sup>o</sup> Las Misiones vendidas, tendran en lo subsicivo, el Carácter de Pueblos, y las hipotecadas o arrendadas, u ocupadas por el Gobierno o de fincas Departamentales, siendo del cuidado de este, en el reglamento que forme, detallar lo conveniente a la seguridad de Subsistencia, emolumentos de los M. M. R. R. Padres actuales, y mantencion decorosa del culto divino, y auxilios espirituales de los Pueblos.

Monterrey Agosto 23 de 1844.

W. Spruce

Pío Pico

Manuel Ballester

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

I, J. W. MANDEVILLE, Surveyor General of the United States for the State of California, and as such, having in my office, and in my charge and custody, a portion of the Archives of the former Spanish and Mexican Territory or Department of Upper California, as also the papers of the late Board of Commissioners "to ascertain and settle Private Land Claims in California;" by virtue of the power vested in me by law, Do hereby Certify that the four preceding, and hereunto annexed pages of tracing paper numbered from one to four inclusive, exhibit a true and accurate copy of documents on file in my office.

*[Handwritten signature]*

*[Handwritten signature]*



In Testimony Whereof, I have herunto signed my name officially and caused my Seal of Office to be affixed, at the City of San Francisco, this \_\_\_\_\_ day of January A.D. 1858.

U. S. Surveyor General for California.

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

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

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

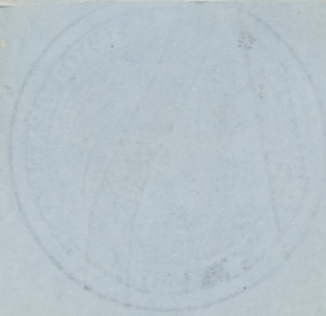
"Sec. 1. Copies of all papers, lately belonging to the United States Board of Commissioners for the settlement of private land claims in California, and on file in the office of the Surveyor General of the United States for the State of California, and all copies of documents and papers belonging to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

120 55-125 Inclusive.

No: 412  
J. W. Redman & Co.  
of  
The United States

Proceedings of Depart-  
mental Assembly

Dated July 14, 1858,  
W. A. Church,  
Depty.



700  
No. 125

(Imprint of the original document)

Political Government  
of California

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To the Committee  
of "Hacunda  
y Guerra"

Narciso Botello  
Srio

Most Excellent Señor

As soon as I received the Supreme Order of the 11<sup>th</sup> of May of the Current year, in which was communicated to me the probability of a war between our nation and that of the United States, I gave orders for the forming of auxiliary regiments, for the defence of the Country, and as the Case may arise, that these may be placed in active service, it would be well for Your Excellency in exercise of the powers vested in you, to provide the necessary means to sustain them, as nothing can be counted on from the Treasury, on account of the exhausted condition in which it is ever found.

Protecting to you my distinguished  
Consideration -

God and liberty - Aug. 20<sup>th</sup> 1844

Manl. Michelobren.

Most Excellent  
Departmental Assembly



To the Most Excellent Assembly.

The Special Committee, appointed to report in respect to the means, mentioned in the Superior note of the Departmental Government, of the 20<sup>th</sup> of the present month, for the support of the Auxiliary forces raised by the same, on account of the probability of a war between our nation and that of the United States of the North, reports; That it has deliberated with the greatest care and attention upon this matter, but notwithstanding all this, it has been unable to determine any plan for the establishment of said means; but considering the critical circumstances in which the Country is found, threatened with the loss of nothing less than its rights and liberties, and remembering the exhausted condition of the National Treasury, and the necessity of seeking means for the security and defence of the Country, those that present themselves to the Committee, as the only certain means of furnishing resources to the Government for this object, are the Missions, as well because those that are in existence, are going to ruin, as because they should be considered as the property of the nation, the benefits of the same being adequately rewarded by the right and protection afforded them. The Committee proposes the following articles for the deliberation of Your Excellency:

First - The Superior Government of the Department may expose to sale, mortgage or lease the real property and the lands of cultivation of the Missions of Upper California, comprehended in the extent from San Diego to Sonoma, and after first paying the legal debts of the missions, the surplus to be appropriated towards defraying the expenses of the war.

Second - The Mission of Santa Barbara shall be excepted from the provisions of the preceding article, and shall exist as an Episcopal Palace, and in consideration

of its "neofia", that of Santa Ynez, as a college for the instruction of the youth of California, and some other that the Government, <sup>may reserve</sup> as national saving grounds for the subsistence of the troops.

Third - The Government will order the time, mode and form, in which said sale, mortgage or lease will be made, and make a prudent division of the flocks, and utensils among the respective neofitas, giving them lands.

Fourth - The Government may require the prompt payment of any debts due by or from any individuals, to said Missions, and dispose of them in the same way, as the surplus mentioned in Article 1<sup>st</sup>.

Fifth - The alienated Missions, will have in the future, the Character of Pueblos, and those mortgaged or leased, or occupied by the government, that of "Finca Departamental" (property, the profits of which are received by the Department), Care to be taken by the government in the regulations formed, to provide that which is necessary for the subsistence and emolument of the existing Clergy and Father, the decent maintenance of Divine worship, and for the spiritual aid of the people.

Monterey August 23<sup>o</sup> 1844.

Don, Spence Pio Pico. Narciso Botello,

No. 412

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by J. W. Alderman  
J. W. Alderman  
a 29 p to Assembly &  
Response

<sup>23 August 1844</sup>  
The United States

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Translation of Proceedings  
of Departmental Assembly

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Filed July 14. 1858.

W. A. Chevers,  
Depty.

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

J. W. Redman & al

vs

No 412 -

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The United States -

The Petition of the abovesaid  
Claimants respectfully shows to this Hon-  
orable Court that this is an application for a re-  
view of the decision of the Board of Land Com-  
missioners rejecting their claim that the  
Transcript of the Record, Proceedings & decision  
of the said Board was filed in the Clerk's  
office of this Hon. Court on the 15<sup>th</sup> day of  
February 1856. That Notice of ~~appeal~~ in-  
tention to prosecute the appeal was duly filed  
according to the requirement of the act of  
Congress approved August 31. 1852 and  
within six months after the filing of the  
said Transcript as aforesaid - That the  
said Land in said Transcript described lies  
within the Northern District of California, and  
within the jurisdiction of this Court.  
And your Petitioners aver that their  
claim and title to said Land is valid and  
pray that the said decision of the said Board  
of Commissioners rejecting their claim may  
be reversed, and that his Hon. Court will  
decree the validity of their said title and  
claim, and your Petitioners will ever  
pray as  
Thornton Williams & Thornton  
Attys for Claimants -

No: 412  
U. S. Dist. Court  
N. Dist. of Cal.

J. W. Redman Etal

vs  
The United States

Petition

Filed July 14, 1858.

W. H. Chivers,  
Dep. Clerk

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J. W. S.

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

412 ND  
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The United States  
appellees

vs } 412.

J. M. Redmond & Co  
appellants

The United States by  
their attorney, deny the validity of the title  
set out in the petition of the said appellants  
and pray that the decision of the Board of  
Commissioners be affirmed, and that the  
said title be declared to be invalid

J. Della Torre,  
U. S. Atty.

San Francisco }  
Jan'y 14, 1857 }

412

U. S. District Court

The United States

vs

J. M. Redmond et al

Answer

Filed July 14, 1858.

W. H. Chivers,  
Dep. clk.

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P. Della Torre  
Sf. atty.

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

J. W. Redman et al

vs

No 412 ~

The United States

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It is hereby stipulated and agreed  
that the copies of the Decrees, orders of the Su-  
preme Government of Mexico, and of the  
proceedings and Decrees of the Depart-  
mental Assembly, filed in this case,  
from the office of the Surveyor General of California,  
shall be considered as evidence therein  
to the same effect as if the same were  
duly certified by the Surveyor General  
of California, whose absence from this city  
has prevented the obtaining his certificates.

San Francisco  
January 14. 1858

P. Della Torre  
No. 2. Atty  
Thornton Williams & Thornton  
Atty, for claimants



No. 412

J. W. Redman et al

vs

The United States

Stipulation

Filed in Office  
January 14, 1858,  
W. A. Chesnut,  
Deputy.

At a *Stated* Term of the District Court of the UNITED STATES OF AMERICA, for the Northern District of California, held at the *Court Room* in the City of SAN FRANCISCO, on *Monday* the *17<sup>th</sup>* day of *May* in the year of our Lord one thousand eight hundred and fifty-eight

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Present:

The Honorable OGDEN HOFFMAN, District Judge.

*R. A. Redman Exr*  
*et al*

*vs*

*No: 412*

*The United States*

In this case on application of the said claimants by their attorney made in open court, it is ordered by the Court that an appeal on behalf of the said claimants from the final decision of this Court rendered in said cause at the present term be and the same is hereby granted, and that a certified transcript of the pleadings evidence, deposition and proceedings in the said cause be sent to the Supreme Court of the United States without delay -

And it is further ordered that bond be given in the sum of Two Hundred and fifty-dollars with one good and sufficient security, to be approved by the Court -

*Ogden Hoffman*  
*Dist Judge*

412,

United States District Court, Northern  
District of California.

*J. H. Ridman,*  
*et al,*

vs.

*The United States,*

*Order granting  
appeal, & fixing  
amt. of appeal Bond,*

Filed

*May 17.* 1858,

*W. A. Chesnut,*

CLERK.

DEPUTY.

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J. W. Redman et al

vs  
The United States

No: 412 -

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It appearing fully to the satisfaction of the Court, that the said J. W. Redman has departed this life since the submission of this cause, and that R. A. Redman is the sole Executor of his last Will and Testament, and has duly qualified as such, It is now therefore adjudged, ordered and decreed, that as regards the said J. W. Redman this cause be revived, and hereafter proceed in the name of the said R. A. Redman Executor of the last Will and Testament of J. W. Redman deceased and Charles Clayton, and Heirs of James M. Jones deceased.

Edw. Hoffman

U. S. District Judge

412.  
District Court of the  
United States in & for the  
Northern District of Cal-  
ifornia

---

J. W. Redmond

vs  
The United States

---

Order reviving  
suit in name of  
Executor &c,

---

Filed May 17, 1858,  
H. H. Cherris,  
Clerk

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

R. A. Redmond, Exec<sup>r</sup>. et al.

v.

The United States

No. 412.

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Know all men by these presents, that Charles Clayton and Samuel S. Johnson, of the State of California are held and firmly bound to the above named United States in the sum of Two hundred and fifty (\$250) Dollars, to be paid to the said United States for the payment of which well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally by these presents, sealed with our seals and dated the Eighteenth day of May in the year of our Lord one thousand eight hundred and fifty eight.

Whereas the above named appellants have prosecuted an appeal to the Supreme Court of the United States, at the City of Washington, in the District of Columbia to reverse the decree rendered in the above suit by the District Court of the United States for the Northern District of the State of California, Now therefore the condition of this obligation is such, that, if the above named appellants shall prosecute their appeal to effect and

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answer all damages and costs if they fail to make their appeal good, then this obligation shall be void otherwise to remain in full force and virtue.

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Witness our hands and seals the day and year above written

Signed & sealed

Charles Clayton

in presence of

Saml. S. Johnson

W. H. Chivers



Charles Clayton and Samuel S. Johnson parties to the above Bond, being duly sworn each for himself says that he resides in the Northern District of ~~the State of California~~ the State of California and that he is worth the sum of Two hundred and fifty Dollars over and above all his just debts and liabilities

Sworn to and subscribed

Charles Clayton

May 18<sup>th</sup> 1858, before me

Saml. S. Johnson

W. H. Chivers

U. S. Commr

I hereby approve of this Bond,

May 18, 1858,

Edw. Hoffman  
U. S. Secy prop

No 412.

N. Y. District Court,

J. M. Redman, et al.,

vs

The United States.

Appial Bond,

Filed May 18, 1858,

H. A. Chevers,

Clerk,



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 *Saturday* the *24<sup>th</sup>* day of  
*April* in the year of our Lord one thousand

eight hundred and fifty-seven.

Present:

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The Honorable OGDEN HOFFMAN, District Judge.

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*The United States*

*vs.*

*N. A. Redman Ex last will &  
test: of M. Redman dec'd. - et al.*

*D. C. 412 : L. C. 742*

*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, 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 claims of the appellants is invalid and that the same be and hereby is rejected.*

*Ogden Hoffman*  
*Dist. Judge*

412

United States District Court, Northern District of  
California.

The United States

vs.

R. A. Redman, Ex'r et al

**ORDER.**

Decree rejecting claim.

Filed May 21, 1858,

W. H. Cheney  
CLERK.

By

DEPUTY.

Mmanuel Micheltorena, General of  
Brigade in the Army of the Republic,  
Adjutant General of the Staff thereof,  
Governor, Commanding General & Inspector  
of both Californias



One of the full instructions with which  
the undersigned General & Governor is  
invested being that of "examining the  
condition of all the Missions, in their  
government, advancement and treasury  
Department, as also for their order," and the  
Supreme Government having transferred  
to him all of its powers, as made to ap-  
-pear by a Supreme order dated Feb<sup>y</sup> 11<sup>th</sup>  
1842, with the advice & consent of the Rev<sup>d</sup>  
Fathers, Fray Jose Joaquin Jimeno,  
Fray Jose de M<sup>te</sup> de Jesus Gonzalez  
Rubio whom for that purpose I caused  
to appear before the Government, as well  
as the Presidents of the other Missions, as  
well as in the name & representation of  
the Rev<sup>d</sup> Father President "Vicar  
Foraneo" Fray Narciso Duran: being  
well informed of all that was necessary  
and considering that already the vast  
and

and immense tracts of land formerly the property of the Indians, are distributed amongst the citizens as it was at a time when it became one of the exigencies of the country: that the said establishments so pious & beneficial to both social and religious order, in converting the savages to Catholicism and to an agricultural & civil life are now reduced almost to the orchards & squares of the temples & edifices: that the Rev<sup>d</sup> Fathers Ministers have only a mercenary subsistence and that divine worship without prospering is scarcely maintained; that the Indians by their natural indolence, by the increase of labor, the scarcity of food & their nakedness, those who are not employed by individuals or a Mission prefer to return and die unconverted in the woody deserts, to drag out a life of servitude fraught with <sup>even</sup> misery and devoid of any of the social enjoyments: that this constant emigration of the Indians from individuals the Indians to individuals or to the woods, retards more and more the agriculture and instead of attracting the savages within the pale of our Holy Religion, frightens them away

away; that in the administration of the  
Missions some frauds & notorious wastes  
have been committed and that all the  
inhabitants of the country complain, and  
that there is no other means of reanimating  
the skeleton of a giant which is the re-  
-siduum of all the ancient Missions, except  
a recourse to experience and to support  
it with the levy of the civil & ecclesiastical  
powers, the whole having been well con-  
-sidered & maturely weighed, I have  
thought proper to adopt the following  
articles

(For the Proclamations articles, see  
Halleck's Report, Appendix No 19)

And the original having been signed  
in testimony of its validity & solemnity in the  
City of Los Angeles in Upper California by  
the undersigned Rev. Fathers in the name  
of the Rt Rev. "Vicario Foraneo" Fray Narc-  
-iso Duran, and as Presidents the under-  
-signed from the other Missions: by Don  
Francisco, first Clerk, as Secretary ad interim  
and by Don Manuel Michetorena, General  
of Brigade of the Mexican Army, Governor,  
Commanding

Commanding General & Inspector  
Therefore I order it to be communicated  
to the Riv<sup>l</sup> Fathers, and the Prefects, and  
that it be published by Proclamation for  
the information & observance of all the  
civil & military authorities

Given in the City of Los Angeles on  
the 29<sup>th</sup> day of March 1843.

(signed) Manuel Mitchell<sup>th</sup>  
signed Franc<sup>o</sup> Arce - Provisional Sec<sup>y</sup>

Don J<sup>e</sup> M<sup>o</sup> de J<sup>e</sup> G<sup>o</sup>mo<sup>th</sup>

President & vic<sup>e</sup> Prefect of the Northern Missions

W. S. vs Redman

Proclamation

Unpublished

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Prem<sup>o</sup> Me

Mitchell<sup>th</sup>

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U. S.

<sup>vs</sup>  
L. W. Redmond et als } Orchard of Santa  
} Clara —————

Williams —

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claim rejected by the Board

1<sup>st</sup> as to bona fides of the grant.

The 1<sup>st</sup> deposition is that of Antonio  
Maria Pico —

~~he~~ All the witnesses admit the  
genuineness of the signature —

The next is James Alexander Forbes  
He swears that Pio Pico was  
not in Los Angeles at the date  
of the grant — This we admit —

It was the custom to date  
grants at the capital wherever  
they might in point of fact have  
been executed —

The next is that of Redmond  
proves quantity of land —  
and that it was enclosed,

The next are Jas C. Crane &  
Benito Diaz

Thomas D. Larkin

vs

The United States

Cases brought  
to a hearing - together  
by consent -

Whitecombe -

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reads stipulation admitting evidence  
"before the Commission only"

Williams -

The charge of fraud rests ex-  
clusively on the testimony of  
Benito Diaz

Whitecombe

Walton vs. Shelley 1. Sanford &  
East 300

Williams

application for grant made  
before taking of Sonoma - by  
Bear Flag party - on 12 June 1846

As to power of Governor to  
grant

Presumption is in favor of power  
of officer exercising it -

1. The petition of Bishop Allen



and decree —

Herb's ref

This was in 1840 —

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In 1844 - (Aug 20<sup>th</sup>) Mecheltorena ~~pre~~  
~~sents~~ a makes a communication  
to the departmental assembly

Resolutions by dep. Assembly  
Decree authorizing sale of Missions —

U. S. vs Ritchie

Montes de Oca document  
Rockwell decree of 3<sup>d</sup> April  
1846 - authorizing ~~governor~~  
to carry into effect decree  
of May 1845

U. S. v Bull

Strother & Lucas 12	Pet 438
7	" 95
8	" 451
15 Louisiana	585

Sella Torre

The uninterrupted enjoyment  
of these Mission lands was  
held by the administrators  
padres, priests or whatever

We contend that the uninterrupted possession of this orchard raises the presumption of a grant

13 How. 10 & 11

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I refer to Judge Felch's opinion  
in U. S. vs Allmamy  
Texas R. 288

"City of Orleans" 10 Peters. 662

But even if the Government had previously to 1840 the power to grant after that time they had not for in that year they had granted to Bishop Garcia "all the lands appurtenant to the Mission

Micheltorenas Proclamation

On the 15<sup>th</sup> April 2 days after the passage of the decree of the 13 or 12 days after it passed on the 3<sup>rd</sup> April. he reads in the Montedivosa document.

The Supreme Gov's now varied in its policy

4 with regard to missions  
Rockwell p. 446

As to Stroth v Lucas  
as a presumption of power

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We show that he <sup>had</sup> been forbidden  
to sell we are asked to pre-  
sume that that order had been  
~~checked~~

10 Peters 437

Thomson -

I think can be no question  
as to the power of Pio Pio  
to grant

nor as to the genuineness of  
the signature.

By the act 1824

The actual lands actually occupied  
by the Missions are reserved from  
colonization for the present -

The Act of 1833 - Rockwell 453

De Lucas - Louisiana, N.

Nos 402 + 412,

Thos. O. Sarkin  
and  
J. W. Richmond, et al,

vs  
United States,

Orchard of Santa Clara,

Notes of Argument,

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Se dio cuenta igualmente con lo siguiente una comunicacion oficial del Ministerio de Relaciones Jha 14 de Noviembre ultimo dirigida al Gobierno Departamental en la que por desposicion superior se le pide informe sobre lo que haya determinado con respecto a misiones q<sup>s</sup> se sabe han sido puestas a publica subasta los bienes de ellas que se habian entregado a los Padres para el manejo de temporalidades y que entretanto a de dho. informe se suspenda todo procedimiento en cuanto a enagenacion de los bienes referidos

Se acordó por la corporacion que siendo esta nota directa al Gobierno del Departamento se le devolviese para que manifestara su sentir y entonces pudiera atender el asunto.

There was ~~considered~~ in like manner the following, an official communication from the Ministry of Relations dated 14<sup>th</sup> of November last directed to the Departmental Government in which by superior direction, information was asked for as to what may have been determined upon with respect to Missions, the property of which it is known has been put up at public sale, which (property) had been delivered to the Padres for the management of the temporalties, and that until such information be given every proceeding respecting the alienation of the said property be suspended.

It was resolved by the Corporation that this communication having been specially directed to the government of the Department should be returned to it in order that it might manifest its wish, and that thereupon the subject might be attended to.

Office of the Surveyor General, )

Of the United States, for California. )

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I, J. W. MANDEVILLE, Surveyor General of the United States for the State of California, and as such, having in my office, and in my charge and custody, a portion of the Archives of the former Spanish and Mexican Territory or Department of Upper California, as also the papers of the late Board of Commissioners "to ascertain and settle private Land Claims in California;" by virtue of the power vested in me by law, Do hereby Certify that the preceding, and hereto annexed page of tracing paper numbered from one to inclusive, exhibits a true and accurate copy of extract from the proceedings of the Departmental Assembly on the 15<sup>th</sup> day of April 1846, as the same are on file in said Archives



In Testimony Whereof, I have hereto signed my name officially and caused my Seal of Office to be affixed, at the City of San Francisco, this 18<sup>th</sup> day of 185

U. S. Surveyor General for California.

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

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

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

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

155 96-158 Inclusive

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Departmental  
assembly  
April 15th 1846





Peticiones que ha hecho el Supremo Gobierno el Y. Sr. Obispo de California en su nota de 7 del corriente y carta particular de la misma fecha

Desde que se quitaron a los misioneros los temporalidades que ellos mismos crearon y aumentaron, con su trabajo personal y con sus sueldos, entraron a disputar los bienes de las misiones los seculares y sus familias y entre ellos algunos que yo conozco á quienes no se podia fiar ni aun una pequena cantidad. Ya se deja entender la ruina de tales bienes en semejantes manos. En el ministerio de V. E. deben ojerter los reclamos que sobre ese tiempo hechos, y por los que el congreso general dio una ley suspensiva de la que mandaba la secularizacion de misiones, la que hasta ahora segun entiendo no se ha cumplido quizá por justas consideraciones del gobierno. En posteriores reclamos que hice en el año de treinta y seis, informé al Supremo Gobierno de los males que los misioneros padecen y entre ellos no es el menor, que los administradores de las misiones se apoderaron de las casas en que vivian los padres unas casas fabricadas por los religiosos y en cuya construccion invertieron los sueldos que percibian y el trabajo de sus manos. Se han visto reducidos á vivir allí, como arrojados y con bastante incomodidad como yo mismo lo vi Tener en la misma habitacion a unas gentes que en muchas noches no les defian des

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canzar por las embriagueces juegos o bailes que con escándalo están presenciando los neofitos! Veda insufrible ciertamente! Veda amarguísima para unos religiosos recoletos, y tanto que muchos de ellos han pensado abandonar las misiones y retirarse á buscar la tranquilidad y paz de sus espíritus! Veda penosa que ha retraído y retrae á muchos de ir á las misiones por no exponerse á tantos padecimientos y desprecios de su carácter! Mas no se crea por esto que quiero se lleve á efecto la entrega de las temporalidades á los religiosos. Se muy bien y aun lo hego dicho al gobierno que dentro de breve tiempo ya no habrá nada de los bienes que tenían aquellas opulentas misiones lo que recibimos los Administradores cuando los padres las entregaron. Lo que quiero es que para las misiones nuevas que se vayan estableciendo se tomen medidas legislativas para que no se repitan tan graves desordenes. De otro modo ¿que padre misionero habrá que quiera trabajar por aumentar los bienes de los Indios infelices si sabe por experiencia que se les han de quitar á sus legítimos dueños y se han de entregar á otros porque los disfrutan roben y tienen sin haber les costado ningún trabajo? ¿Cual será el religioso que quiera hacer casa ni plantar huertas para su recreo y su comodidad, si ha visto que con la mayor injusticia se les quitan, y entran á poseerlos hombres que antes se socorrian con limosnas por los mismos misioneros y que repentinamente se mudan los Señores y tienen los infelices pa-

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dones que vivir á sus expensas? En lo que insisto é insistiré  
 siempre es en que queden á los misioneros las casas y huertas  
 que ellos ó sus antecesores hicieron que estan contiguos á las  
 iglesias y con inmediata comunicacion á ellas. Los administra-  
 dores (como que tienen á su disposicion á los Indios y los in-  
 tereses de las misiones) pueden hacer casa para ellos, y dejar  
 á los padres quietos y en paz. Esta medida la juzgo tan  
 necesaria que sino se toma, no habra quien quiera ir á ser-  
 vir las misiones, yo desde ahora lo prevengo al Supremo Go-  
 bierno; y si para los misioneros es una medida tan necesaria,  
 ¿que se debe decir con respecto al obispo? Esto será una cosa  
 bien dura que mientras puede edificar su casa no tenga en donde  
 recogerse con su familia ni en donde poner sus estudiantes y  
 ministros ni en donde dar principio á su seminario! Por  
 esto pues suplico al Supremo Gobierno, que se dé una orden  
 (la misma que yo lleve) para que se entreguen á los misio-  
 neros las casas y huertas de las misiones y que la de San  
 Diego ó la de San Luis segun sea ocupada intencionalmente por el  
 Obispo y sus familiares juntamente con el padre misionero  
 hasta que el obispo pueda hacer su casa episcopal y el edifi-  
 cio para su seminario 2.<sup>o</sup> Los Administradores niegan por  
 regular los servicios de los Indios á los padres y esto aun pa-

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gandoles lo justo. Esto exige otra disposicion del Supremo Gobierno  
para que se me franquen sirvientes con sus salarios equitativos y  
sus arrendamientos. Juntamente suplico se me dé el terreno para edi-  
ficar mi iglesia, mi casa y mi seminario. 3.<sup>o</sup> Bien sabe el Supre-  
mo Gobierno que no tengo en mi obispado mas eclesiasticos que  
los religiosos Fernandinos, Guatemaltecos y Dominicanos de esta Provincia  
de Mexico, y si los Prelados de estas corporaciones nos quitan a  
sus subditos no tendria quien ocupar su lugar por ahora. Segun  
he sabido el Reverendo Padre Provincial de Santo Domingo pretende  
o piensa quitar a los religiosos sus subditos las gracias que por  
misioneros tienen en su orden, y esta medida influiria mucho pa-  
ra que aquellos se vinieran y para que otros no vayan a las mi-  
siones, y debe exponerle la consideracion de que los sacrificios que  
hacen les son inutilis en su religion. Vengo pues al Supremo Go-  
bierno que oficie al Reverendo Padre Provincial para que no se haga  
innovacion alguna y que sigan los misioneros lo mismo que estan  
hasta que el obispo tenga clérigos que puedan ocupar su lugar y  
ellos puedan dedicarse a las conversiones vivaces. Deseo ademas  
que el Gobierno me recomiende con los Reverendos Padres Guardianes  
de Guadalupe de Lobatecos y San Fernando para que me auxilien  
con religiosos, y que si algunos me quisiere acompañar me se les  
impida. 4.<sup>o</sup> El Supremo Gobierno pida al Santo Padre por con-

ducto de nuestro enviado a Roma, que se me concediera llevar a mi obispado a cuantos sacerdotes quisieren acompañarme y fueran de mi aprobación sin que sus respectivos prelados pudiesen estorbarlo. Del facultad no vino entre las que luego en mi poder recibí sino tanta que se le reclamaron al Sr. Montoya sobre el particular y en el entretanto que el Gobierno se interesara con los prelados, cuando alguno ya sea del clero secular o regular le escriba que quiero acompañarme y yo digo al mismo Gobierno que es de mi aprobación. 5.º Como una de mis principales miras debe ser la conversión de los gentiles y propagación de la fe, es indispensable que tenga operacion para el logro de mis deseos. Los colegios aprobados de la república están acabados excepto el de Guadalupe y de Tacatecas, y que apenas podrá cubrir las diez misiones de que se tiene cargo. Creo pues de necesidad que me conceda licencia para fundar en mi obispado colegio de misioneros para que estos según formando nuevas misiones o pueblos, y suplico al Gobierno que por conducto de nuestro enviado a Roma impetu del Santo Padre pueda yo proceder a la fundación aunque sea con un solo religioso para que este dé hábitos y profesiones a los que quieran dedicarse a la importantísima conversión de ~~los~~ gentiles. Igualmente suplico se me dé para local de este colegio la isla llamada de los Angeles u otro terreno apropiado. Los niños en general han

carceres de educacion y de enseranza para que sean útiles a la soci-  
 dad, quiero pues fundar en el lugar de mi residencia un cole-  
 gio de educandas, para el que tambien necesito terrenos sufi-  
 ciente. 7.º Por una anomalia que, entiendo se ha estado cobrando  
 en un despado los diezmos por parte del Gobierno civil de  
 Sonora. Debe pues prohibirse esta a aquellas autoridades para que  
 queden los fieles libres para darlos a la Iglesia en la sucesion  
 los que aunque sean ayudarian a los grandes proyectos de  
 pública beneficencia que tengo formados. 8.º El Gobierno gra-  
 vió al Fondo Píadoso de mi Iglesia con un préstamo que hizo el  
 Señor Teran de sesenta mil pesos con el oneroso curso de dos  
 por ciento mensuales, se comprometió el Gobierno a abonar dos  
 cientos y mas pesos diarios (segun estoy informado) para extin-  
 guir esta deuda ominosa Cumplió esta promesa por un poco  
 de tiempo y despues lo ha dejado al cargo del Fondo que sin per-  
 no perder su capital amenazado por las mismas condiciones  
 del préstamo ha estado haciendo sacrificios asi para amortizar  
 la deuda como para pagar los réditos mensuales. En tales cir-  
 cunstancias se halla dicho Fondo sin arbitrios para dar los  
 sínodos a los Misioneros cuyos habramientos tiene pendientes  
 y sin poderme ayudar a mi en los gastos que debo hacer  
 para marchar a mi diócesis los que son muchos como no  
 se cuenta a la penetracion de V. E. Es pues justicia que

pido el que se arbitre algunos medios por el Gobierno para cubrir cuanto antes la deuda del Sena Toran para que quede libre el Fondo

En mi oficio se me paso decir que desee poner mis edificios o mas bien fundar una poblacion en un rancho que se halla frente de San Diego asi por la comodidad que presenta de agua de lena como por no estar titoral y expuesto a la invasion de algun pirata. Es ademas de muy buen temperamento si el Gobierno quisiera poner alli alguna fuerza militar seria de suma importancia para la comunicacion con Sonora, pues contendria a los Indios del Rio Colorado, y tambien seria muy al caso para intentar la reduccion de estos pobrecitos y su felicidad espiritual y temporal. Estoy persuadido que en esta medida se facilita via la comunicacion con el interior de nuestra republia y el Gobierno tendria mas frecuentes noticias de aquel de parlamento

Nov. 17 de 1840 = El Excmo Presidente se ha servido proveer de conformidad con todo lo pedido por el Reverendo Obispo de California en esta nota hasta donde alcanzan las atribuciones de S. E. y da luego el decreto del congreso de 7

de Nov de 1835 que mandó reponer las misiones a su antiguo estado; a cuyo fin se extendió orden general al Señor Gobernador de California para que por medio de las autoridades subalternas se restituya sin dilacion ni embargos a los Padres Misioneros las posesiones y bienes que usaban bajo su administracion para la conversion de los infieles, y era y las demas ordenes que han de expedirse en obsequio de la peticion del Reverendo Obispo se pondran en manos de S. Y para su mejor exito, y se le hará otra orden a fin de que el Señor Gobernador le auxilie en cuanto compete a la fundacion del obispado y por lo que toca a los terrenos de que no estan o han ya estado en posesion de los misioneros librese oficio a la Junta Directiva del Banco a fin de que acuerde con S. Y hasta donde pueda en justicia y piedad lo que mas facilite sus peticiones; y en lo que no alcancen los arbitrios del Banco le manifieste al Gobierno para que se inicie al Poder Legislativo o se provea como haya lugar en derecho y contestase con este decreto al Reverendo Obispo.

Es copia Mexico Nov 21 de 1840



Firmado

J. Gutierrez

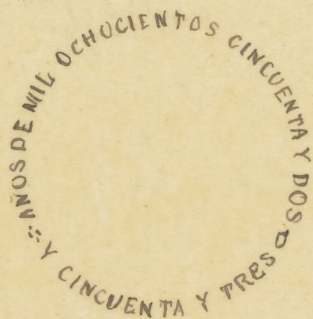
Mexico Oct 7 de 1852

Conforme  
 Juan de Dios  
 El #



412 ND  
PAGE 167

SELLO CUARTO



UN REAL

A infante oficial mayor del Ministerio de Policia -  
nes,

Certifico: ser autentica la firma que  
antecede del Sr. D. Jose M<sup>a</sup> Duran  
Oficial mayor del Ministerio del  
Justicia Mexico Octubre 8 de 1852

J. Miguel Arroyo

(Encase) Ar Coy. Exhibit N<sup>o</sup> 1 P. L. annexed to the Deposition  
of Jose Miguel Arroyo Dec 29. 1854 - In the S. Alvarado  
Saucy of the Catholic Church - Filed in Office Dec 29. 1854  
Gov Fisher says - Recorded in Rec of Ev. vol 18. p. 571 to  
574 "

MINISTERIO  
DE LA  
INTERIOR

Ytuo Sir

Dada cuenta al E. S. P. n.º, con el oficio de V. S. y de F. Del corriente e impuesta de todo cuanto en el expone con el objeto de dar lugar a sus graves obligaciones como Obispo de California, se ha servido proveer de conformidad con todo lo pedido en el citado oficio y con lo que tambien se hizo en carta separada de igual fecha sta donde al cansan las atribuciones de S. E. y da lugar al Decreto del Congreso gral de 7 de Nov. de 1835 que dispone

se mantubieran las misio-  
nes en el estado que tenian  
antes de la Ley de 17 de Agosto  
de 1833 a cuyo fin se li-  
bra orden por este Minist.  
al G. G. G. de Californias  
para que por medio de las  
autoridades subalternas se  
restituya sin dilacion ni  
embargos a los Padres Mi-  
sioneros las posesiones y  
hijos que estaban bajo su  
administracion para la con-  
versacion de los infieles

Y lo digo a V. S. en  
certificacion

Dios y Libertad Mexico  
Nov. 17 de 1840

Mariano

G. G. G.  
de Californias.

412 ND  
PAGE 170

A fe documento del Sr Obispo  
de California, certifico por la pre-  
sente que la firma agregada a  
este documento es la del Ministro  
del Interior de aquella epoca del ter-  
cer Merico segun me consta por otros  
documentos oficiales, que he visto de  
dicho Sr

San Francisco December 29/54



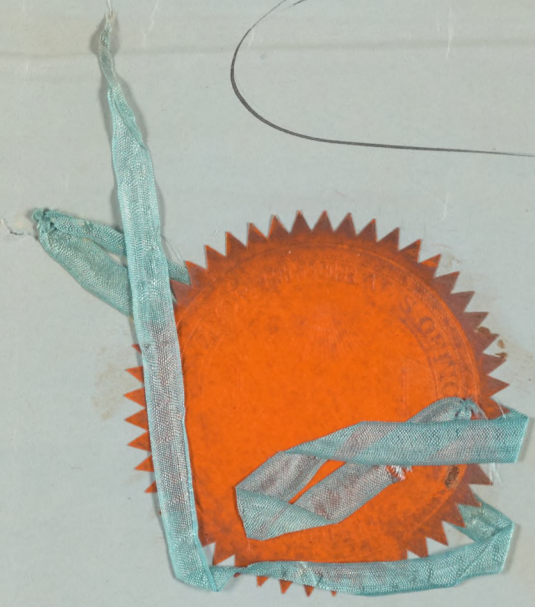
To the Hon  
Secy of the Republic  
Mexicana in San Francisco

Recordado de la Republica  
Mexicana en San Francisco

(Enclosed) N<sup>o</sup> 609 - Exhibit N<sup>o</sup> 2 P.S. annexed to petition  
of Sr Miguel Yanez - Dec 29 1854 - Smith & Almonney  
Lawyer of the Catholic Church - Filed in Office Dec 29 1854  
Gen Fisher Secy - Recorded in Record of Ev. Vol 18. pages  
775 + 776

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

I, J. W. MANDEVILLE, Surveyor General of the United States for the State of California, and as such, having in my office, and in my charge and custody, a portion of the Archives of the former Spanish and Mexican Territory or Department of Upper California, as also the papers of the late Board of Commissioners "to ascertain and settle private Land Claims in California;" by virtue of the power vested in me by law, Do hereby Certify that the twelve preceding, and hereto annexed page of tracing paper numbered from one to twelve inclusive, exhibit a true and accurate copy of two documents on file in Case N<sup>o</sup> 609 on the Desk of said Board of Survey Commissioners in which Joseph S. Alemany is claimant of the lands of the Catholic Church



In Testimony Whereof, I have hereto signed my name officially and caused my Seal of Office to be affixed, at the City of San Francisco, this 11<sup>th</sup> day of January 1858

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

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

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

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

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

159 to 171 Inclusive.

(Printed text, likely bleed-through from the reverse side)

412 ND



MINISTERIO  
DE JUSTICIA

EL INSTRUCCION PUBLICA.

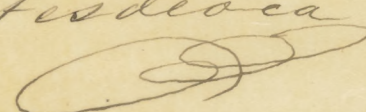
412 ND  
PAGE 172

E. S.

Ha llegado á noticia del E. S. Presd.<sup>te</sup> que el Gobierno de su D<sup>pto</sup> de Quantam<sup>to</sup> ha dispuesto sacar á publica subasta todos los bienes pertenecientes a las minas del mismo que el anterior del N. C. habia mandado devolver á los respectivos Mineros para el manejo y adimon de sus temporalidades; en consecuencia se ha servido prevenirme que en Gobierno se suva informar sobre estos particulares, suspendiendo desde luego todo procedimiento en cuanto á enagenacion de los bienes de que se trata, hasta la resolucion del Sp<sup>mo</sup> Gobierno.

Fingo el honor de decirle á V. C. con los fines indicados, protestándole mi consideracion y apre-  
cio.

Dios y Libertad. Mexico Noviembre 14 de  
1845.

Montesdeoca  


E. S. Gobernador del D<sup>pto</sup> de  
de California,

Quinto de Monterrey.

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

I, J. W. MANDEVILLE, Surveyor General of the United States for the State of California, and as such, having in my office, and in my charge and custody, a portion of the Archives of the former Spanish and Mexican Territory or Department of Upper California, as also the papers of the late Board of Commissioners "to ascertain and settle private Land Claims in California;" by virtue of the power vested in me by law, Do hereby Certify that the \_\_\_\_\_ preceding, and hereto annexed page of tracing paper numbered ~~four~~ one to \_\_\_\_\_ ~~inclusive~~, exhibits a true and accurate copy of a document on file in my office.

*[Handwritten signature]*

*[Handwritten signature]*



In Testimony Whereof, I have hereto signed my name officially and caused my Seal of Office to be affixed, at the City of San Francisco, this 23<sup>rd</sup> day of December 1857.

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

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

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

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172 501739 inclusive,

417 ND

Orchard Santa Clara  
Montesdioca document.



CLARK M. BENTLEY

J. W. Redmond et al } Land Cont No 742  
 vs } Dist Cont No 412  
 The United States } "Orchard of Santa Clara"

412 ND  
 PAGE 174

The claimants have produced in evidence a deed purporting to have been made by Pío Pío Pico for the on the 30<sup>th</sup> June 1846 conveying the orchard of Santa Clara <sup>El Estero</sup> to Castañeda, Arenas & Dias in consideration of \$1200 paid by them to the Gov.

Also an <sup>memorandum</sup> receipt or account purporting to have been signed by Pico of the articles furnished to the Government by the Señores Don Castañeda Arenas and Dias in payment of the purchase money of the gardens of Santa Clara and San José. This receipt or account is dated Los Angeles July 2<sup>d</sup> 1846—

The grant purports to be signed by Pío Pico as governor and also by José Mathias Moreno Secretary. It contains appended to it is the usual note cubficate signed by Moreno <sup>stating</sup> that "a note of this superior decree has been taken in the corresponding book"

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PAGE 175

No expediente from the archives has been produced nor do those records contain any trace whatever of the execution of this grant - no corresponding book has been exhibited ~~and~~ nor is any such found among the archives -

~~There is~~

No possession of the land was taken by the grantees during the existence of the former government, but ~~but~~ it is stated by Gaspar de Foces that the orchard remained in the possession of the missionary priests up to the year 1849 or '50 - About that time one Osio obtained the possession but by what right or title does not appear.

The claim rests wholly on the alleged grant produced by the parties with the usual proof of signatures and on the parol testimony offered by them -

It is contended on the part of the U. S. that the grant was made subsequently to the conquest of the country

and is antedated —

The grant as we have seen purports to have been made at Los Angeles on the 30 June 1846 —

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PAGE 176

It was proved before the Board that at that date Pio Pico was not at Los Angeles — but ~~that he was~~ <sup>at Santa Barbara</sup> with his Secretary & suite at ~~Santa Barbara~~ — This is in fact the claimants have taken position in this Court the the position of Cayetano Arenas, who testifies that the grant was made in Santa Barbara and sent by the Governor to the witnesses at Los Angeles where it was received by him July 4<sup>th</sup> 1846 — & it is ~~this~~ <sup>his</sup> ~~then~~ <sup>therefore</sup> ~~is~~ <sup>suggested</sup> ~~is~~ <sup>is</sup> ~~explained~~ <sup>is</sup> that the grant was dated at Los Angeles the Capital of the Department tho' actually signed at Santa Barbara in accordance with the <sup>practice</sup> ~~custom~~

of the Governor. The explanation is plausible, tho' it has somewhat the air of an after thought to meet a difficulty that had unexpectedly arisen.

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PAGE 177

It is strange however that the receipt above referred to, should particularly set forth that "it was given for the security of those interested in the city of Los Angeles on the 2<sup>d</sup> July 1846" when in fact, if executed at all, on that date, it must have been executed in Santa Barbara or on the Governor's own rancho.

The grant as has been stated is in to Juan Castañeda Luis Arenas and Benito Diaz - of these Castañeda is dead. The other two have been examined as witnesses -

It is clearly proven and indeed admitted by Cayetano Arenas that ~~the~~ the grant is in the hands of



from Pio Pico, viz July 4<sup>th</sup>  
Casteda, Benito Diaz and  
Luis Arenas the father of the  
witness were not in Los Ange-  
les but were in the upper  
country - but that the latter  
arrived a few days after-  
wards.

Luis Arenas testifies that he  
first saw the grant in the  
hands of Casteda in his Arenas'  
house in Los Angeles - ~~that~~  
In view of some ~~the~~ ~~importance~~  
~~to~~ ~~of~~ ~~it~~ ~~being~~ ~~of~~ ~~great~~ ~~importance~~  
~~to~~ ~~the~~ ~~case~~ ~~the~~ ~~date~~ ~~of~~ ~~this~~ ~~occurrence~~ ~~will~~  
~~be~~ ~~apparent~~ ~~when~~ ~~we~~ ~~come~~  
~~to~~ ~~consider~~ ~~the~~ ~~testimony~~ ~~of~~  
~~Benito~~ ~~Diaz~~ -

~~Benito~~ ~~Diaz~~ ~~testifies~~ that he left  
San Jose for Los Angeles the  
day after he heard of the  
taking of Sonoma by the Ameri-  
cans - He says this event occurred  
in the middle of June - sup-  
posing then the witness' memory  
to be accurate he must have  
lingered on the road if his

son is to be seized, longer  
~~enough to~~ a considerable time  
 for Cayetano Ruas <sup>as we have seen</sup> swears  
 that he received the grant  
 in Los Angeles on the 4<sup>th</sup>  
 July and his father did not  
 arrive until some days after  
 wards -

Suis Ruas <sup>for the</sup> states that he met  
 Casteneda in Los Angeles a  
 little while after his arrival -  
 We have already seen however  
 that Casteneda did not arrive  
 in Los Angeles until about  
 the 20<sup>th</sup> July - and Suis Ru  
 was admits that when Castene  
 da showed him the grant  
 Ruito Deas and Gov Pico  
 were in the place and that  
 he saw them every day -

Bearing these facts in mind  
 we proceed to consider the  
 testimony of Deas <sup>with respect to the execution of the grant</sup> -

This witness swears that the  
 grant was executed in Los  
 Angeles about the 1<sup>st</sup> August  
 that he saw Casteneda write



It and that on the same day he brought it back to the house of Luis Arenas with the Governor's signature attached to it. That the receipt for money and articles furnished was written a few days after but that he has the witness never paid any thing for <sup>or account of</sup> these purchases.

If this testimony be true there is an end of the case —

The fact that the grant is in the handwriting of Casteneda would seem of itself such a corroboration of Dias testimony as to exclude much doubt as to its truth — ~~But if to this be added the fact that Arenas himself does not pretend to have heard of the grant, or the agreement for the sale of the orchard until after the Castenedas arrival in Los Angeles — and this notwithstanding that, if the receipt be genuine, he Casteneda &~~

//

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PAGE 182

Dias had on the 2<sup>d</sup> July  
furnished to the Governor  
Cash and various supplies  
to the amount of \$3200 -  
~~Areas' account of the mode~~  
~~of payment is hardly con-~~  
~~vincible with the tenor of~~  
~~the receipt -~~ <sup>Accordingly</sup> <sup>he</sup> states that  
he gave the Governor 200  
head of Cattle and that he  
received back \$300 in change  
and that he delivered to Pico  
a writing which showed that  
he made his part of the  
payment with the 200 head  
of cattle which were then  
on Pico Pico's rancho. - He  
adds that Pico Pico has these  
same cattle to this day -

Pinto Dias states that he only  
knows of the payment for the  
orchard of Santa Clara only  
from ~~Castro~~ what Casteneda  
told him - viz that he Caste-  
neda had given a note to  
Pico payable when the Mexi-  
can authority should be reconstituted

lished but that he, Dias  
never paid any part of it—

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The fact that the grant is in  
the handwriting of Casteneda  
might perhaps be accounted  
<sup>consistently with the good faith of the transacting</sup>  
for, on the hypothesis, which  
<sup>however</sup> would ~~however~~ be <sup>plainly</sup> conjec-  
tural that Casteneda had  
written it out ~~the~~ and sent it  
to the Governor— But <sup>in</sup> such  
a case ~~how can~~ <sup>he</sup> must  
have written it before it was  
signed— And how can ~~the~~  
we explain the ~~circumstance~~  
that the date June 30<sup>th</sup> 1846  
is in the same handwriting  
and evidently written at the  
same time with the rest  
of the document?

But supposing this difficulty  
surmounted the receipt is  
evidently antedated or a fabri-  
cation— Aenas could not  
have assigned ~~the~~ <sup>the receipt for</sup> cattle spoken  
of by him, and ~~which~~ <sup>is</sup>

acknowledged on the 2<sup>d</sup> July  
for Los Angeles for at that  
he did not arrive until a  
few days before Casteneda  
and his son, the only im-  
portant witness for the claimants  
states that he only arrived  
some days after the 4<sup>th</sup>  
July -

Casteneda could not have  
delivered paid the cash or  
delivered the other articles  
mentioned in the receipt on  
the 2<sup>d</sup> July for at that time  
he was at the head quarters  
of Gen Castro at a distance  
of several hundred miles -  
and yet the receipt is in  
his handwriting -

It would seem therefore that  
Dias' account must be  
the statement account given by  
Dias seems the only mode  
of reconciling these <sup>discrepancies</sup> difficulties  
and tho' I should hesitate  
to accept his unsupported  
statement whether for or a

justify a claimant in cases of this class yet in this instance it is so corroborated & confirmed by other testimony, as to justify a belief in its truth.

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Cayetano here as is the only witness on the part of the claimants who pretends to have seen the grant before the end of July -

If the claim is to be confirmed it must be on his unsupported testimony -

The account given by him bears strong marks of improbability - He states that the grant was sent to him as it related to his father's business, and he was instructed to retain it until Casteneda came down from the upper country - "It is strange that as it was his witness his father arrived a few days after, but Casteneda did not arrive, as we have seen until about the 20<sup>th</sup> The father of the witness was one of the ori-

granted. It is strange that he should have not only have retained with held for nearly two weeks this grant from his Father ~~son~~<sup>who</sup> was as much entitled to receive it as Casteneda, but should not ~~even~~<sup>at least</sup> have shown it to him or so far as appears mentioned its reception. That Luis Arenas saw it for the first time in Casteneda's hands is positively stated by himself.

The deposition of Cayetano Arenas was taken after the rejection of the claim by the Board. It is perhaps not ~~to~~ surmise unfair to say that testimony of so much importance and introduced for the first time after the claim was rejected should ~~be~~ ~~continued~~ is liable to ~~much~~<sup>much</sup> suspicion.

Luis Arenas was examined & cross examined at length before the Commission. ~~It is~~ ~~can~~ hardly suppose that his son

The fact that Po Pico was not in Los Angeles at the date of the grant had already been established. His attraction was Had he known that the grant was in the possession of his son from the 4<sup>th</sup> July until he delivered it to Casteneda he would naturally have stated it. He does not allude to the circumstance - It is difficult to imagine that Cayetano Arenas could have received such this grant for the benefit of his father amongst others, retained it in his possession for nearly two weeks, and now mentioned the circumstance at the time - or even subsequently up to the moment when his father testified before the Commission -

There are other circumstances which tend still further to corroborate the statements of Dias. The ~~most~~ alleged motive of making this sale was the

~~The~~ It is ~~contended~~ by the ~~claiming~~  
 that exigency of public affairs  
 which compelled <sup>the Government</sup> itself  
 to avail ~~of~~  
 all the resources at its disposal  
 It was ~~made~~ <sup>dated</sup> within a few  
 days of the capture of Monte  
 rey - ~~the use of the money~~  
 and other articles would seem  
 to The payment & support  
 of the Army must have been  
 of the first necessity and the  
 use to which the money &  
 other articles would <sup>most probably</sup> ~~certainly~~  
 have ~~been~~ applied - And  
 yet Castro the Commanding  
 General states that he never  
 received any money arising  
 from the sale of the orchards  
 for the expenses of the war -  
 And that if money from  
 that source had been so  
 appropriated he would cer-  
 tainly have known it - On  
 his cross examination he repeats  
 that the Pio Pico might have  
 applied money or property arising  
 from this sale to public uses





me decisive - neither Pio Pico  
nor Moreno have been examined  
in the case -

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The Governor in the absence of  
all evidence from the archives,  
was the person who of all others  
could have explained when &  
why he made the grant - why  
it was dated at Los Angeles;  
from whom he received it for  
signature - to whom he submitted  
to what uses he applied  
the property - and how it hap-  
pened that he signed a re-  
ceipt for it at Los Angeles  
on the 2<sup>d</sup> July as received from  
Castro Alvarado & Diaz when  
no one of them was at  
that place - He might also  
~~have explained what was the~~  
~~purpose of the grant for the object~~  
~~of some form of payment for~~  
~~which the receipt declares the~~  
~~articles to have been delivered -~~  
~~for no such grant has ever been~~  
~~submitted to the Board~~  
Moreno might have explained

how it happened that the grant was in this case written by Casteneda when the latter was at its date and for some weeks subsequently at a distance of several hundred miles — If the grant was written by Casteneda and transmitted to the Governor for signature, Moreno might perhaps have told us how it happened that Casteneda guessed so prophetically the day on which the Governor would sign it, and was able by anticipation to fill in the date at the same time, ~~and~~ ~~the same~~ he drew the instruments. I'm that the date was written at the same time and in the same hand with the rest of the document is obvious on inspection.

In a case like this — surrounded by circumstances so suspicious and depending <sup>on the part of the claimants</sup> ~~entirely~~ upon the testimony of Cayetano Arcuas alone

The <sup>depositions</sup> evidence of the Governor and his secretary ought not to have been withheld.

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PAGE 192

Unsupp

If the decision of this case depended upon weighing the <sup>of</sup> testimony of <sup>of</sup> Dias Arenas against the ~~oath of Dias~~ <sup>and</sup> testimony equally unsupported of Dias the duty of determining which had sworn falsely would be doubtful difficult as well as painful —

But the testimony of Dias is corroborated by every fact in the case — that of Arenas is <sup>of not</sup> ~~either~~ inconsistent with them ~~is~~ wholly unsupported — while explanation from the test if not the only source from which it could be furnished is withheld — I think it clearly my duty to reject the claim —

Having reached this conclusion I it is unnecessary to discuss the question whether the Governor

had authority to sell the lands of the Missions — or at least the orchards vineyards and cultivated portions of which under the decree of the Supreme Government & the order of proclamation of Michel Tomera had been restored to the Missionary Priests.

April 24

After the above opinion was read it was suggested to the Court by the Counsel for the claimants that the deposition of José Moreno, which was on file in the case of J. & Lukin vs the U. S. had been by consent admitted as evidence in this. <sup>claim in the case</sup> The ~~case~~ of Lukin vs. U. S. is a ~~claim under the grant~~ founded on the same grant as that exhibited in this case for a part of the orchard.

In the opinion delivered in that case the testimony of Moreno is admitted to — as

23

412  
J. W. Redman

vs

The U. S

Opinion

April 23<sup>d</sup> - 1858

412 ND  
PAGE 194

follows—

"Moreno testifies that the signatures of himself and Pico, are genuine and affixed at the time the documents bear date. And that Pico Pica 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's] directions— as he was much occupied with official duties—

It is enough to say with respect to this statement that it is abundantly proved that Casteneda could not have been at Santa Barbara on the 30<sup>th</sup> June or the 1<sup>st</sup> July the days on which the documents are dated—

The statement of Cogetano Arenas the principal witness for the claimants is wholly incompatible with the idea that Casteneda was at Santa Barbara and wrote the grant by ~~himself~~

Moreno's directions -

412 ND  
PAGE 196  
Arenas states that the Governor sent the grant to him "with instructions to retain it until Castueda or came from the Upper Country"

It cannot surely be pretended that at that time Castueda was with the Governor writing out the grant & receipt and deboning the articles mentioned in the latter.

The testimony of Moreno taken in this case has been found ~~to be~~ in the view of ~~the~~ ~~court~~ ~~therefore~~ entirely fails to afford that satisfactory explanation of the circumstances which the Court is entitled to expect.

It has only served to confirm me in the opinion already expressed as to ~~the~~ ~~its~~ ~~the~~ ~~merits~~ of the claim.



412  
Thoman

W

U. S.

Opinion

Sept. 24.

Office of the Board of Commissioners,

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

San Francisco, July 11<sup>th</sup> 1856

Sir;

I am directed by this Board to transmit you, pursuant to the requirements of the Act of Congress, approved August 31<sup>st</sup>, 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. 742. on the Docket of this Board, wherein J. W. Redmond, et al, are the Claimant, for the place known by the name of "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

412

DISTRICT COURT OF THE UNITED STATES,

Northern District of California.

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OPINIONS

DELIVERED BY HIS HONOR,

OGDEN HOFFMAN, DISTRICT JUDGE,

IN THE CASES OF

J. W. REDMAN AND OTHERS,

— AND —

THOMAS O. LARKIN,

CLAIMING THE

“Orchard of Santa Clara.”

---

P. DELLA TORRE, Esq., Attorney for the United States.

THORNTON, WILLIAMS & THORNTON, for Redman, et al.

WHITCOMB, PRINGLE & FELTON, for T. O. Larkin.

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SAN FRANCISCO:

1858.

Whitton, Towne & Co's Print, 125 Clay Street.

DISTRICT COURT OF THE UNITED STATES,  
NORTHERN DISTRICT OF CALIFORNIA.

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**OPINION,**

DELIVERED BY HIS HONOR, OGDEN HOFFMAN,  
DISTRICT JUDGE.

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J. W. REDMAN ET AL.

vs.

THE UNITED STATES.

} Land Commission, No. 742.  
} District Court, No. 412.  
} "Orchard of Santa Clara."

The claimants have produced in evidence a deed purporting to have been made by Pio Pico, on the 30th June, 1846, conveying the Orchard of Santa Clara to Castañeda, Arenas & Dias, in consideration of \$1200 paid by them to the Government.

Also, memorandum or account purporting to have been signed by Pico of the articles furnished to the Government by the Señores Castañeda, Arenas and Dias, in payment of the purchase money of the Gardens of Santa Clara and San José. This receipt or account is dated Los Angeles, July 2d, 1846.

The grant purports to be signed by Pio Pico, as Governor, and also by José Matias Moreno, as Secretary. Appended to it is the usual certificate, signed by Moreno, stating that "A note of this superior decree has been taken in the corresponding book."

No expediente from the archives has been produced, nor do those records contain any trace whatever of the execution of this grant. No corresponding book has been exhibited, nor is any such found among the archives.

No possession of the land was taken by the grantees during the existence of the former government. It is stated by Jas. Alexander Forbes that the orchard remained in the possession of the missionary priests up to the year 1849 or '50. About that time, one Osio obtained the possession, but by what right or title, does not appear.

The claim thus rests entirely on the alleged grant produced by the parties, with the usual proof of signatures, and on the parol testimony offered by them.

It is contended on the part of the U. S. that the grant was made subsequently to the conquest of the country, and is antedated.

The grant, as we have seen, purports to have been made at Los Angeles on the 30th June, 1846.

It was proved before the Board that at that date Pio Pico was not at Los Angeles, but at Santa Barbara, with his secretary and suite. The claimants have taken however, in this court, the deposition of Cayetano Arenas, who testifies that the grant was made in Santa Barbara and sent by the Governor to the witness at Los Angeles, where it was received by him July 4th, 1846; and it is suggested that the grant was dated at Los Angeles, the capital of the department, though actually signed at Santa Barbara, in accordance with the practice of the Governor. The explanation is plausible, though it has somewhat the air of an after thought to meet a difficulty that had unexpectedly arisen.

It is strange, however, that the receipt above referred

to, should particularly set forth that "it was given for the security of those interested in the city of Los Angeles on the 2d July, 1846," when in fact, if executed at all on that date, it must have been executed in Santa Barbara or on the Governor's own rancho.

The grant, as has been stated, is to Juan Castañeda, Luis Arenas and Benito Dias. Castañeda is dead. The other two have been examined as witnesses.

It is clearly proven, and indeed admitted, by Cayetano Arenas, that the grant is in the handwriting of Castañeda.

It is also in proof that during the whole month of June, and during the first days of July, 1846, Castañeda was at the head quarters of General Castro at Santa Clara. That about the 10th of July he was on the road to Los Angeles, at which place he arrived about the end of July.

These facts are established by the testimony of General Castro himself, by that of Benito Dias, and of Cayetano and Luis Arenas. Dias states that he left Monterey for Los Angeles on the 10th or 12th July. That on his way down he met Castañeda with General Castro; that they proceeded together to Los Angeles, where they arrived about July 20th. That they saw Pio Pico on their journey at his rancho of San Marguerita.

Cayetano Arenas, the claimants' witness, states that at the time he received the grant from Pio Pico, viz., July 4th, Castañeda, Benito Dias, and Luis Arenas the father of the witness, were not in Los Angeles, but were in the upper country; but that the latter arrived a few days afterwards.

Luis Arenas testifies that he first saw the grant in the hands of Castañeda in his (Arenas') house, in Los Angeles; that he left San José for Los Angeles the day after he heard of the taking of Sonoma by the Americans. This event occurred in the middle of June. Supposing then the witnesses' memory to be accurate, he must have lingered on the road, if his son is to be believed, a considerable time; for Cayetano Arenas swears, as we have seen, that he received the grant in Los Angeles on the 4th July, and his father did not arrive until some days afterwards.

Luis Arenas further states that he "met Castañeda in Los Angeles a little while after his arrival." We have already seen, however, that Castañeda did not arrive in Los Angeles until about the 20th July. And Luis Arenas admits that when Castañeda showed him the grant, Benito Dias and Governor Pico were in the place, and that he saw them every day.

Bearing these facts in mind, we proceed to consider the testimony of Dias with respect to the execution of the grant. This witness swears that the grant was executed in Los Angeles about the 1st August; that he saw Castañeda write it, and that on the same day he brought it back to the house of Luis Arenas with the Governor's signature attached to it; that the receipt for money and articles furnished was written a few days after, but that he (the witness) never paid anything on account of purchase.

If this testimony be true, there is an end of the case.

The fact that the grant is in the handwriting of Castañeda, would seem of itself such a corroboration of Dias' testimony as to exclude much doubt as to its truth. Arenas himself does not pretend to have heard of the grant, or the agreement for the sale of the orchard, until after Castañeda's arrival in Los Angeles; and this notwithstanding that, if the receipt be genuine, he, Castañeda, and Dias had on the 2d July, furnished to the Governor cash and various supplies to the amount of \$3200. He further states that he gave the Governor 200 head of cattle, that he received back \$300 in change, and that he delivered to Pico a writing which showed that he made his part of the payment with the 200 head of cattle which were then on Pio Pico's rancho. He adds that Pio Pico has these same cattle to this day.

Benito Dias states that he knows of the payment for the orchard of Santa Clara only from what Castañeda told him, viz., that he (Castañeda) had given a note to Pico, payable when the Mexican authority should be reëstablished, but that he, Dias, never paid any part of it.

The fact that the grant is in the handwriting of Castañeda might, perhaps, be accounted for consistently with the good faith of the transaction on the hypothesis, which however would be purely conjectural, that Castañeda had written it out and sent it to the Governor. But in such case he must have written it before it was signed, and how can we explain the circumstance that the date (June 30th, 1846) is in the same handwriting and evidently written at the same time with the rest of the document?

But supposing this difficulty surmounted, the receipt is evidently antedated, or a fabrication. Arenas could not have assigned the cattle spoken of by him, and the receipt for which is acknowledged on the 2d July at Los Angeles. He did not arrive until a few days before Castañeda; and his son, the only important witness for the claimants states, that he arrived some days after the 4th July.

Castañeda could not have paid the cash, or delivered the other articles mentioned in the receipt, on the 2d July, for at that time he was at the head quarters of General Castro, at a distance of several hundred miles; and yet the receipt is in his handwriting.

The account given by Dias seems the only mode of reconciling these discrepancies, and though I should hesitate to accept his unsupported statement whether for or against a claimant in cases of this class, in this instance, it is so corroborated and confirmed by other testimony, as to justify a belief in its truth.

Cayetano Arenas is the only witness on the part of the claimants who pretends to have seen the grant before the end of July.

If the claim is to be confirmed, it must be on his unsupported testimony.

The account given by him bears strong marks of improbability. He states that the grant was sent to him, "as it related to his father's business," and that he was instructed to retain it until Castañeda came down from the upper country. His father arrived a few days after, but Castañeda did not arrive, as we have seen, until about the 20th.



The father of the witness was one of the original grantees. It is strange that he should not only have withheld for nearly two weeks this grant from his father, who was as much entitled to receive it as Castañeda, but should not at least have shown it to him or, so far as appears, mentioned its reception. That Luis Arenas saw it for the first time in Castañeda's hands is positively stated by himself.

The deposition of Cayetano Arenas was taken after the rejection of the claim by the Board. It is perhaps not unfair to say, that testimony of so much importance and introduced for the first time after the claim was rejected, is liable to much suspicion.

Luis Arenas was examined and cross examined at length before the Commissioners.

The fact that Pio Pico was not in Los Angeles at the date of the grant, had already been established. Had he known that the grant was in the possession of his son from the 4th July until he delivered it to Castañeda, he would naturally have stated it. He does not allude to the circumstance. It is difficult to imagine that Cayetano Arenas could have received this grant, made for the benefit of his father, amongst others, and retained it in his possession for nearly two weeks, without ever mentioning the fact, either at the time, or even subsequently, up to the moment when his father testified before the Commission.

There are other circumstances which tend still further to corroborate the statements of Dias. The alleged motive of making this sale was the exigency of public affairs, which compelled the Government to avail itself of all the resources at its disposal. It was dated within a few days of the capture of Monterey. The payment and support of the army must have been of the first necessity, and the use to which the money and other articles would most probably have been applied; yet Castro, the commanding General, states that he never received any money arising from the sale of the orchards for the expenses of the war, and that if money from that source had been so appropriated, he would certainly have known it. On his cross ex-

amination he repeats that, though Pio Pico *might* have applied money or property arising from this sale to public uses without his (witness') knowledge, yet he could not have applied it to the use of the army.

But Luis Arenas negatives the idea that the cattle at least were applied to public uses, for he states (perhaps unguardedly) that the 200 head given by him to Pico are still on Pico's rancho. This fact alone would be sufficient to raise a suspicion that the Governor did not, in a crisis of public affairs, in good faith attempt to obtain supplies by a sale of public domain; but rather, that he has been induced at a subsequent day, for his individual advantage, to sign an antedated title.

But even if there were less force in all these circumstances, one consideration seems to me decisive. Neither Pio Pico nor Moreno have been examined in the case.

The Governor, in the absence of all evidence from the archives, was the person who of all others could have explained when and why he made the grant; why it was dated at Los Angeles; from whom he received it for signature; to whom he sent it; to what uses he applied the property, and how it happened that he signed a receipt for it at Los Angeles on the 2d July, as received from Castañeda, Arenas and Dias, when no one of them was at that place.

Moreno might have explained how it happened that the grant was in this case written by Castañeda, when the latter was at its date, and for some weeks subsequently at a distance of several hundred miles. If the grant was written by Castañeda and transmitted to the Governor for signature, Moreno might perhaps have told us how it happened that Castañeda guessed so prophetically the day on which the Governor would sign it, and was able by anticipation to fill in the date at the time he drew the instrument. For that the date was written at the same time and in the same hand with the rest of the document is obvious on inspection.

In a case like this—surrounded by circumstances so sus-

icious, and depending, on the part of the claimants, upon the testimony of Cayetano Arenas alone—the depositions of the Governor and his secretary ought not to have been withheld.

If the decision of this cause depended upon weighing the unsupported testimony of Arenas against testimony equally unsupported of Dias, the duty of determining which had sworn falsely would be difficult as well as painful.

But the testimony of Dias is corroborated by every fact in the case, while that of Arenas, if not inconsistent with them, is wholly unsupported, and explanation from the best if not the only source from which it could be furnished is withheld. I think it clearly my duty to reject the claim.

Having reached this conclusion, it is unnecessary to discuss the question whether the Governor had authority to sell the lands of the Missions, or at least the orchards, vineyards and cultivated portions which, under the decree of the Supreme Government and the proclamation of Micheltorena, had been restored to the missionary priests.

April 24th.

After the above opinion was read, it was suggested to the court by the counsel for the claimants, that the deposition of José Matias Moreno, which was on file in the case of T. O. Larkin vs. The U. S., had been, by consent, admitted as evidence in this. The claim in the case of Larkin vs. U. S., is founded on the same grant as that exhibited in this case and is for a part of the orchard.

In the opinion delivered in that case, the testimony of Moreno is adverted to, as follows :

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

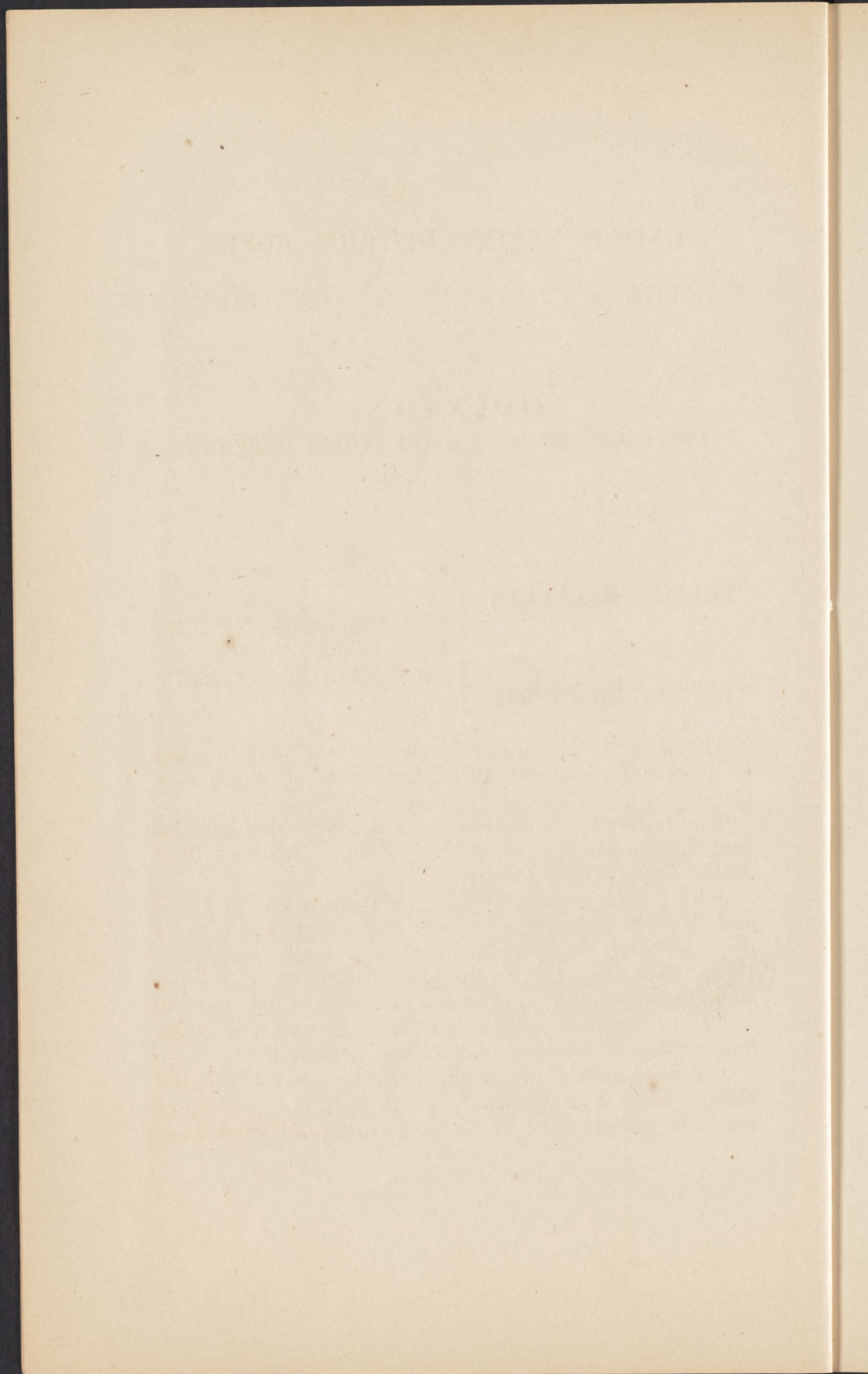
"It is enough to say with respect to this statement, that it is abundantly proved by the testimony of Gen. Castro, Benito Dias, Luis Arenas and Cayetano Arenas, that Castañeda could not have been at Santa Barbara on either the 30th June or 2d July, the days on which the documents are dated.

"The statement of Cayetano Arenas, the chief witness for the claimants, is wholly incompatible with the idea that Castañeda could have been at Santa Barbara and written the grant by Moreno's directions.

"Arenas states that the Governor sent the grant to him 'with instructions to retain it *until Castañeda came from the upper country.*'

"It cannot surely 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."

The testimony of Moreno, therefore, entirely fails to afford that satisfactory explanation of the circumstances which the court is entitled to expect. It has only served to confirm me in the opinion already expressed as to the merits of the claim.





a fact admitted by Moreno himself, whose testimony was taken since the claim was rejected by the Board.

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It cannot surely 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.

In the opinion delivered in the case of Redmond vs. The U. S., the omission to take the depositions and to obtain explanations from Pico and Moreno was adverted to.

The testimony of Moreno taken in this case has confirmed me in the views expressed in that opinion, as to the character of this claim.

On the hearing of the cause it was objected on the part of the claimants that the depositions of Benito Dias and others, which are contained in the transcript of the proceedings of the Commissioners, were not properly in evidence before this Court.

Those depositions were admitted under a stipulation which provided that "the depositions of Benito Dias, &c., taken in case No. 742 on the docket of this Commission,

be read and used in evidence in and upon the hearing of this cause before this Commission *only.*" &c.

It was urged that this stipulation authorised by its terms the admission in evidence of the depositions before the Board only, and that if the testimony was desired to be used by the U. S. in this court, it must be regularly taken. The District Attorney thereupon 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 which allowed the evidence to be used before the Board, but withheld it from this court, were controlled and avoided by the positive provisions of the statute.

I should have much preferred to have had the witnesses re-examined with full opportunity to the counsel for the claimant to cross-examine.

The U. S., however, insist that the evidence is already in the case, and call upon the court to pass upon the question.

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 of the statute evidence in this court on appeal, notwithstanding that a stipulation of counsel may have provided that it should be used and read before the Board only.

If this evidence be received, I think it clear, as before stated, that under the proofs, the case must be rejected. I have stated the point made by the counsel for claimants, that it may be availed of in the Supreme Court on appeal.

But even without these depositions it is by no means clear that the claim should be confirmed on its merits.



There would still remain proof that the grant was signed at Santa Barbara, and that it is in the handwriting of Castañeda. The statement of Cayetano Arenas, that it was sent to him on the 4th July, to be retained until Castañeda arrived from the upper country, of itself justifies the inference that Castañeda could not have been at the time the grant was drawn, with the Governor, and the hypothesis that he might have drawn it and 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 evidently written at the same time with the body of the instrument.

But even if this hypothesis be admitted, it destroys the presumption 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. This they have attempted to do by the evidence of Moreno and Cayetano Arenas. But their testimony is, as we have seen, contradictory—the one swearing that Castañeda drew out the grant by his direction, because he was much occupied—the other, that it was sent to him to be delivered to Castañeda 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 Castañeda, and purporting to be written on the 2d 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 Castañeda.

In the absence of all proof from the archives, of all evidence of a possession under the former Government, and of all explanation from the Governor as to the circumstances under which he made the grant or the payment of the consideration, I incline to think it would be the duty of the court, even if the depositions referred to be excluded, to reject the claim.

But it is objected on the part of the U. S. that, assuming the grant to have been 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 the Governor to make it.

The general right of the Governor of California to grant vacant lands formerly pertaining to the Missions, is not disputed.

It is urged, however, that the exercise of this right was, at the time of making this grant, expressly prohibited by the Supreme Government.

This prohibition is supposed to be contained in the following official note:—

“ *Ministry of Justice and* }  
*Public Instruction.* } ”

“ MOST EXCELLENT SIR :

“ His Excellency 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 your predecessor had ordered to be returned* to the respective missionaries for the direction and administration of their temporalities: Therefore, he has thought proper to direct me to say that the said Gov't will report upon these particulars, suspending thereupon all proceedings respecting the alienation of the before mentioned property until the determination of the Supreme Government.

“ I have the honor to communicate it to your Exc'y for the purposes indicated, protesting to you my consideration and esteem.

“ God and Liberty.

“ *Mexico, Nov. 14, 1845.*

“ MONTESDIOCA.

“ TO HIS EXC'Y THE GOV'R OF THE }  
DEPARTMENT OF THE CALIFORNIAS.” }

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

The official note above quoted, unquestionably enjoins a suspension of all further proceedings as to the property referred to. But what property does it refer to? The

document itself states: "The property which your predecessor had ordered to be returned to the respective missionaries for the direction and administration of their temporalities."

The predecessor referred to was Micheltoarena. The inquiry then is, what property had Micheltoarena ordered to be returned to the Missions?

The order of Micheltoarena is contained in his Proclamation, dated March 29th, 1843,

But to understand clearly the object and effect of that Proclamation, the then existing condition of the Missions, and the previous acts of the Government 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 and to form villages and distribute the lands to colonists. Of the houses belonging to the Missions, one was to be selected as the residence of the curate, and land was to be appropriated to him not exceeding two hundred yards square—the rest were to be used for town houses, primary schools and public establishments and offices.

Various decrees were made and instructions given during the years 1833 and 1834, having for their object to secure the colonization and render effective the secularization of the Missions, as provided by the first decree.

By the instructions given to Don Jose M. Hajar, Political Chief of Upper California, provision was made for the distribution of the moveable property of the Missions, and the 9th August, 1834, Figueroa, then Governor of California, made for the provisional regulations on the same subject "that the fulfillment of the law might be perfect." By these regulations, the Commissioners who, by a previous regulation, had been authorised to take charge of all the "lands, moveable securities and property of all classes," were required to make out inventories of the property of the Missions, "such as houses, churches, workshops and other local things—stating what belongs to each shop,

that is to say, utensils, furniture and implements; as also of the vines and vegetables, with an enumeration of the shrubs; also an estimate of the number of cattle," &c. The inventories were to be kept from the knowledge of the priests, and to be under charge of the Commissioners.

It is apparent, from the whole tenor of the provisional regulations, that the Government intended to take possession of all the property—real and personal—belonging to the Missions; that the curates who were to be appointed, were supported by the salaries allowed by the Government, and that, until their appointment, the missionaries were to be relieved from the administration of temporalities, and to confine themselves to their spiritual functions.

The provisional regulations made by Figueroa seem to have given rise to great abuses, for in January, 1839, we find Governor Alvarado, in view "of the mournful condition in which affairs now are," making a provisional law defining and 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 January 1st, 1839, "had not been sufficient to strike at the roots of the existing evils," he abolished the office of the Administrators, and substituted in their place, stewards, whose duties he prescribed. The object of these arrangements appears to have been to secure the faithful and economical administration of the affairs of the Missions, the protection of the natives, and the preservation and proper application of the property.

Such seems to have been the condition of the Missions at the date of Micheltorena's Proclamation.

The 1st Article of that Proclamation declares that the Government will order the Missions of San Diego, San José, &c., to be delivered up to the Rev. Padres whom the respective Prelate may appoint, 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 the Fathers all

the lands remaining ungranted at the time, or only the houses, orchards, gardens, &c., which owed their existence to the labors of the missionaries.

The 2d Article of the Proclamation would seem to favor the first view, 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," &c., seeming to imply that they were authorised to claim the restoration of all the ungranted land.

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 was issued on the petition of the Bishop of the Californias.

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 missionaries had made, which are contiguous to and in immediate communication with the churches, remain to the use and benefit of the missionaries."

It may therefore, very possibly be, that the restoration ordered by Micheltoarena was only that of the houses, orchards, gardens, &c., solicited by the Bishop, and was not intended to re-possess the Fathers of the extensive tracts of uncultivated lands formerly pertaining to the establishments. The last clause of the Proclamation clearly shows that the Government intended to retain the right of granting such lands, for the Governor promises not to make any new grants "without the information of the Reverend Padres, notorious unoccupancy, want of cultivation or necessity." It is possible however, that the intention of Governor Micheltoarena 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 tutelage, to collect and protect that dispersed and oppressed people.

Be this as it may, the design seems to have been very soon abandoned, and we find Micheltoarena granting Mission lands as freely as any of his predecessors.

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 suspending the sale of the Missions, and reserving and appropriating the adjoining lands as common lands.

On the 28th May, 1845, a decree was made by the Assembly, 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," Governor Pio Pico on the 28th October, 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 highest bidder.

On the 30th March, 1846, the Assembly made a decree authorising the Government to carry into effect the decree of the 28th May last, and providing that if necessary to avoid their total ruin, and in case it was impracticable to lease them, they might be sold at public auction to the highest bidder.

The Assembly does not at this time seem to have been aware of the order signed "Montesdioca," which issued in November 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 property was made until after the conquest of the country.

It is not easy to perceive from what source the Assembly derived the power they thus attempted to exercise. By the Mexican Constitution of 1843, the powers of the Assemblies under the colonization laws were preserved—and those laws were required 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 they derived the authority to increase the powers of that officer, or to authorize sales or grants by him, which, under the colonization laws in force, he had otherwise no authority to make.

Such seems to have been subsequently their own view: for on the 31st October, 1846, an act was passed declaring void the sales of the Missions made by Pio Pico, as Governor, as well as all other acts done by him without authority. As an act of the Assembly, this proceeding may have no force, for it was passed after the final conquest of the country: but it serves to express the opinion of that body as to the validity of the acts of the Governor with respect to the Missions, and probably as to the extent of their own authority to enlarge his powers under the colonization and other laws of the nation, and the regulations and orders of the Supreme Executive.

The order signed "Montésdioca," is dated, as we have seen, on the 14th November, 1845. The decree of the Assembly, which Pio Pico endeavored to carry into effect by his Proclamation of October 28, 1845, was passed May 28th, 1845.

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

The words of the order in the original are "Los Bienes pertenentes á las Misiones." The term Bienes appears to be of comprehensive import, and includes all things, not being persons, which may serve for the uses of man. It may perhaps be rendered by the word "property," and would thus seem to refer to those cultivated lands, orchards, &c., and other appurtenances, such as houses, workshops, 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 in his decree of November 17, 1840, as belonging to the missionaries.

It is to be observed moreover, that the President in the order last referred to, declares that he decrees in conformity with everything which the Reverend Bishop of the

Californias has requested, and "also in conformity with the law of November 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 Californias for the restoration to the Fathers of the possessions and property used by them under their administration for the conversion of the heathen," &c.

The terms of this order indicate that the Governor referred to the property *used* by the missionaries in their pious labors, and not to the extensive tracts of vacant land which might formerly have been included within the limits of the establishments.

That the law of 1835 did not suspend the power of the Governor to grant the Mission lands, has been decided by the Supreme Court, in the case of *The U. S. v. A. A. Ritchie*, 17 How., 540. The grant in that case was made in 1842, and was therefore subsequent also to the order of 1840, made on the petition of the Bishop.

If then we are right in supposing that Micheltorena's proclamation and the official note signed "Montesdioca," were mainly intended to give effect to the order of 1840, and the law of 1835, they afford no other or greater objections to this claim than would be presented by the law of 1835 and the order of 1840, and that these latter did not prevent the Governor from granting the vacant lands of the Mission, has been, in effect, decided by the Supreme Court. But, 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 and 1834, and the Provisional regulations, instructions, &c., made in pursuance, have clearly a two-fold object. The first is to secularize the Missions and convert them into parochial curacies. The second is to take possession for the benefit of the nation, of all the property belonging to the Missions—such as workshops, utensils, furniture, implements; as also the vineyards, orchards, cattle, &c.

The law of November 26, 1833, in terms authorises the Departmental Government "to use in the most convenient



manner, the property devoted to pious *uses* in order to facilitate the operations of the Commission" (for secularizing the Missions.) When, therefore, the Government in view of the abuses and injustice consequent upon these laws and regulations, interposed, by the law of 1835, the order of 1840 on the petition of the Bishop, the proclamation of Micheltoarena, and the Montesdioca document of 1845, it is most probable that it merely intended to suspend or annul that portion of the laws of 1833 and 1834, which related to the "*property*" of the Missions—and not to interfere with the disposition of the vacant lands adjacent to them—to which the Missions could pretend to no title either in law or in justice.

The fact that Alvarado and Micheltoarena 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 proposed to sell or lease the entire property of the Missions, that the order to suspend proceedings was issued.

The claim of Bishop Alemany for the church lands before the Board only embraced the churches, orchards, vineyards, cemeteries, curates' houses, &c. The vacant Mission lands are not included, nor does any witness in that case enumerate those lands as constituting a part of the "*property*" of the Missions, and this claim is in strict conformity with that which we have seen was alone insisted on by the Bishop in his petition to the President in 1840.

We have thus the practical construction given to these laws by both the Government and the missionaries.

But admitting, for the sake of argument, the Governor's authority 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, on the petition of the Bishop, the proclamation of Micheltoarena and the order of 1845, signed "Montesdioca," 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 urged by the Bishop, they had a just and undeniable claim.

Adopting then, the more limited construction of Micheltorena's proclamation and the Montesdioca document, it is evident that the Governor had no right to make a sale such as that alleged in this case, viz: an orchard planted by the priests, contiguous to the missionary buildings, and of which they had long previously been in the enjoyment.

Even 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 did not authorise a sale such as that alleged in this case, for by the terms of both, the sales, if found necessary, were required to be made at public auction.

But the grant produced refers for the authority of the Governor to a decree of the Assembly of the 13th April, 1846. 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 any such found in the records of the proceedings of that body.

It is urged, however, that the order contained in the Montesdioca document was revoked by the communication signed "Tornel," and addressed to the Commandant General of the Californias, 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 defense of the national territory and the maintenance of the national honor. The only clause by which any authority can be deemed to be conferred on the Governor is that in which it is stated that the Supreme Government "expects from your loyalty and patriotism that you will dispose such measures as you may judge most suitable for the defence of the Department, for which object *ample power is granted 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 can hardly be pretended that under it the Commandant General could have sold the vineyards and orchards of the Missions to whomsoever and at whatever price he chose.

It appears to me that the object of this circular was merely to authorise and direct 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 "Montesdioca," prohibiting the sale of the Mission property, and which was issued only three months previously, that object would have been unequivocally expressed, and the Governor directed to make sales of that property to procure 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 even to sell them, as to which latter I express no opinion, it is nevertheless clear that he had no authority either to grant or sell the vineyards, orchards, cemeteries, mission buildings, &c., which, on the petition of the Bishop, had been recognized by the President as belonging to the Fathers, which had been restored to them by Micheltona, and the sale of which, under the Assembly decree of May 28th, 1845, the Supreme Government had promptly interposed to prevent.

If these views be correct, the claim must be rejected for want of authority in the Governor to make the grant.

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DISTRICT COURT OF THE UNITED STATES,  
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OPINIONS

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—AND—  
THOMAS O. LARKIN,

CLAIMING THE  
"Orchard of Santa Clara."

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THORNTON, WILLIAMS & THORNTON, for Redman, et al.  
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