CASE NO.
414
NORTHERN DISTRICT

GARDEN OF SAN CAYETANO GRANT
CLEMENT PANAUD et al.
CLAIMANT

LAND CASE 414 ND 116 pgs.

JAN 10 1963

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414 ND
PAGE 1

TRANSCRIPT

OF THE

PROCEEDINGS

IN CASE

NO. 757.

Clement Panand, et, al. CLAIMANTS.

VS.

THE UNITED STATES, DEFENDANT,

FOR ~~THE PLACE NAMED~~

Garden of San Cayetano.

414 ND
PAGE 2

Office of the Board of Commissioners
to ascertain and settle the private land claims
in the State of California.

Be it remembered, that on this 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, viz:

The Petition of Clement Panaud et al; for the place named "Garden of San Cayetano" was presented, and ordered to be filed and docketed with No. 951, and is as follows, viz:

(vide page 5 of this Transcript)

Upon which Petition the following subsequent proceedings were had in their chronological order to wit:

San Francisco January 9th 1855.

Case no. 951, Clement Panaud et al; for the "Garden of San Cayetano," was ordered to be placed at the foot of the 4th class cases on the trial docket.

San Francisco January 23d 1855.

Case no. 951 was submitted under the Rule of March 21st 1854.

San Francisco, February 6th 1855.

In the same case Commissioner Alpheus Felch delivered the opinion of the Board rejecting the claim.

(vide page 41 of this Transcript)

San Francisco March 6 1855.

In the same case the U. S. Land Agent filed the following Stipulation, to wit;

(Vide page 11 of this Transcript.)

In the same case the Counsel for the claimants filed the following Affidavit and motion, to wit,

(Vide page 9 of this Transcript)

Motion submitted.

414 ND
PAGE 3

San Francisco March 27 1855.

In the same case the Counsel for the claimants filed the following Affidavit and Motion, to wit;

(Vide page 7 of this Transcript)

which motion was taken under advisement.

San Francisco April 3 1855

In the same case Commissioner Alpheus Felch delivered the decision of the Board upon the motion heretofore filed, bearing on the 27 of March last, granting the Same,

Whereupon it was, Ordered That this Case be restored to the trial docket and placed at the foot thereof.

San Francisco May 8 1855.

Case no. 751 was submitted on briefs and taken under advisement.

San Francisco May 10 1855.

In the same case the depositions of Juan B. Alvarado and Antonio Maria Pico witnesses in behalf of the claimants, taken before Commissioner R. Aug. Thompson, the last with documents marked "Exhibits nos. 1 & 2 & 3 R. T." annexed thereto were filed;

(Vide pages 15 & 18 of this Transcript.)

In the same case the Counsel for the claimants filed the following Stipulation, or Amended Petition, to wit,

(See pages 11 & 13 of this Transcript)

San Francisco December 18th 1855.

In the same case Commissioner Alphens Felch delivered the Opinion of the Board rejecting the claim;

(See page 43 of this Transcript)

N. and the following order was made, to wit,

(See page 42 of this Transcript)

414 ND
PAGE 4

H

5

1257

Petition.

414 ND
PAGE 5

To the Honorable Commissioners to settle Private Land Claims in California

The Petition of Clement Pierard and Agnes his wife respectfully shows that in the month of August AD 1845 the Rio Grande of California by virtue of the authority in him vested

granted to Don Juan Bautista Alvarado the rancho of land called the Rancho San Leandro situate in the present county of Santa Clara

Being desirous of having evidence by testimony various and little more or less as is more particularly described in the title, the map, and the act of possession to be filed and presented herewith

(additional time to prepare translations of which the Petitioners hereby pray may be granted them)

That the Petitioners derive their title by mesne conveyance from the said Grantee Don Juan Bautista Alvarado

That he and they have been in actual the date of said grant and still are in the occupation and possession of said granted land

That they have proceeded claiming to the same

That they only for confirmation of their title upon the original papers herewith to be submitted in proof upon the minutes and records in the office of the Surveyor General and upon such other and further proofs as they may be advised are necessary

Wherefore they pray the commissioners to confirm to them the title to the tract of land aforesaid

By their attorneys
Higby & Holladay

Filed in Office March 2nd 1853 Geo Fisher Secy
Recorded in Vol 2 of Petitions on Pgs 148 & 149. Geo Fisher Secy

6

Affidavit & Motion

Board of Commissioners of Settling private Land Claims in California

County of San Francisco ss.

Claim No 751.

Clement Pavaud & Andreas Pico for the Garden San Cayetana

414 ND
PAGE 6

S. M. Holladay being duly sworn doth depose and say that he is the Attorney for the Claimants herein, and that as such he filed their claim to the premises in the petition referred to and that no other person had any charge of said cause.

That by reason of deponents having but three claims before the Board he was seldom in attendance upon its Sessions, and was therefore not familiar with its rules.

That at the time this cause was called and regarded as submitted under the rule on its second call, deponent was not aware of the existance of such Rule but believed he was at liberty to move his cause for hearing any time unless upon a motion of the Law Agent.

Deponent says the Claimant Clement Pavaud is the one with whom deponent has conferred who is a Frenchman, speaking very little English and deponent has found it difficult to communicate intelligably with him.

That before the submission of this

8

case deponent made an appointment with said Parand the Claimant for taking testimony which had been in time for the hearing of this cause, but deponent was disappointed in this, by reason as he has since learned of the said Parand having misunderstood deponents language.

414 ND
PAGE 7

Deponent has examined claimants title papers in this case, and believes Claimants have valid, legal and equitable title to the land petitioned for by them, and that if the cause be reinstated on the Calendar, the Claimants will be able to establish their title to the same.

S. W. Holladay

Sworn and subscribed
this 27th of March 1855 before me,

R. A. Thompson
Com.

On the foregoing affidavit the undersigned Atty for the Claimants in Cause No 751 moves this Hon. Board to place the same cause again on the Calendar, & to allow the Claimants to introduce further proof.
March 27, 1855

S. W. Holladay
Atty for Claimants

Filed in Office March 27, 1855
Geo. Fisher
Secy

9 Affidavit & Motion to reinstate

Board of Land Commissioners
State of California
County of San Francisco.

S. W. Holladay being duly sworn doth depose and say that he is the attorney in the cases in this Honorable Court numbered on the Docket No 751, 752 & 753 for the claimants therein, that as such Attorney he filed the petitions in said causes and has introduced some testimony in each of them. That the said three causes are the only ones in this court wherein deponent is the Attorney, whereby he is not familiar with the rules governing proceedings before this Board. And this Deponent has learned that under the rule of this Board, on the second call of Case No 751 it was regarded as submitted, and that it has been rejected. Deponent was under the belief that he was at liberty at any time to introduce his proof, and move his said cause for hearing, and only at the pleasure of the Claimants or their Counsel unless upon notice of the Law Agent.

414 ND
PAGE 8

Deponent further says, that his clients the Claimants in said causes are Frenchmen with scarcely any knowledge of the English language whereby Deponent as Counsel has found it difficult to communicate intelligably with them. That they reside not in this County but in the Counties

414 ND
PAGE 9

(as he believes) of Alameda & Contra Costa.

That he has, as he supposed made several appointments for them to bring in their witnesses and papers which as they since inform deponent they have misunderstood. Deponent further says that he has devoted a great deal of labor to the preparation of said causes and the examination of the titles therein and believes they have ample proof of title and possession in each of said causes, to entitle them to a confirmation therein.

Wherefore deponent prays this Hon. Court to reinstate said causes upon the Calendar with permission to Claimants to introduce their proof of title &c.

Deponent makes this affidavit himself because he is better informed on the subject than the said claimants and also because said Claimants are now absent from the County & their personal attendance cannot be had here in time for them to make the necessary affidavit & further deponent says not. S. W. Holladay.

Sworn & subscribed before me this 6th day of March 1855.

R. Aug. Thompson Com^r

Upon the foregoing affidavit the undersigned Atty for the Claim^ts in the above entitled cause No 751. Moves this Hon Court to order the said cause reinstated on the Calendar, with leave for Claim^t to introduce their proof of title & possession.

S. W. Holladay — Atty for Claimants.

Filed in Office March 6, 1855 — Geo. Fisher Secy

Filed in Office March 6, 1855 – Geo. Fisher Secy

11

No 751.

Stipulation

Claim of Clemente Panand and Andreas Pico for.
Garden San Cayetano.

It is hereby stipulated that the amended Petition herein may be filed as of the date of the original petition in the case.

May 9. 1855.

S. W. Holladay
Atty for Petitioner
Louis Blanding
Spo. Law Agent.

414 ND
PAGE 10

Filed in Office May 10. 1855
Geo Fisher Secy

No 751

Stipulation

Clemente Panand et al
Claimants for San Cayetano.

It is stipulated that the land claimed in this case lies North of parallel 37° of North latitude.

S. W. Holladay
Attorney for Claimant.

Mc Kune Law Agent

Filed in Office March 6. 1855
Geo Fisher Secy

12

13

Amended Petition

To the Honorable Commissioners to settle private Land Claims in California.

The amended petition of Clement Tarand and Andrias Pico respectfully shows that on the 25th of May 1846 Pio Pico Governor of California by virtue of the authority in him vested, granted to Don Andreas Pico and Don Juan B. Alvarado the tract of Land called the "Garden San Cayetano", in the present County of Monterey being a lot of Land one thousand varas by two hundred varas, a little more or less, as is more particularly described in the title the map and act of possession filed herein.

414 NB
PAGE 11

That the petitioner Clemente Tarand derived his title to the one undivided half of said Land by a deed of purchase from said Juan B. Alvarado, as derived to him from said Governor Pico by the grant aforesaid.

That the said grantees and these petitioners ever since the date of said grant, have been and now are in the possession and occupation of said granted land.

That they know of no conflicting claim to the same. That they rely for confirmation of said title upon the original papers filed herein, and upon such other and further proofs as they may be advised are necessary.

Wherefore they pray the Commissioners to confirm to them the title to the tract of land aforesaid.

S. W. Holladay, Attorney for Petitioners

14

Filed in Office May 10, 1855
Geo Fisher
Sec'y

414 ND
PAGE 12

NB

15

Deposition of A. M. Pico

United States of America }
State of California }

San Francisco May 10, 1855

On this day before Commissioner R. Aug Thompson, came Antonio Maria Pico, a Witness on behalf of the claimants, Clement Panaud et al in case No 751, who after being duly sworn deposed as follows, his evidence being interpreted by the interpreter of the Board

414 ND
PAGE 13

U. S. Associate Law Agent present

Questions by Claimants Counsel.

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

Answer. My name is Antonio Ma Pico, my residence San Jose and I am forty five years old.

2d Question. What office if any have you held in California, and where have you resided as such officer?

Answer. I have been Alcalde and Prefect in the District of San Jose. At the time of the signing of the document now shown to me and marked R. T. No 1, and made an Exhibit to this deposition I was Alcalde of San Jose and this document was made before me and signed as such Alcalde.

3d Question. Look at the document referred to in the answer just given and state if you recognize the

signatures as they appear on said document, and the hand writing of the body of said Instrument?

Answer. I recognize all the signatures to said document, one of which is my own signature, and all the others are the signatures of the persons they purport to be. I have seen each of them write their names, and am familiar with them. All of these were made before me, in my presence, except the last one of Fernandez, and with this exception they were executed at the time the document bears date. The body of said document was written by Miguel Pedroena.

414 ND
PAGE 14

4th Question.

State whether or not you have seen the original of this document now here shown you and marked R. V. No 2 of which it purports to be a copy, and state whether the signatures as they appear on the original thereof are in the hand writing of the persons subscribing it?

Answer. I have seen the original of said document and the signatures as they appear thereon are genuine. My own signature wherever it appears thereon is genuine.

5th Question.

Did you or not put the grantee in possession, and do the other things mentioned in the document referred to marked R. V. No 1?

Answer. The grantee was put in possession and the other acts recited

but in Possession and the other acts recussed

17

as therein mentioned.

6th Question. State if you know whether any connection or interest existed between Andreas Pico & Juan B. Alvarado in regard to the concession of the Land claimed in this case at the time of said concession thereof?

Answer.

I only know that there was a sort of partnership between them, from Andreas Pico himself. I know nothing of my own knowledge.

7th Question.

Do you know any thing further in regard to the subject matter of the case?

Answer. I only know that I gave the possession as required by the Order of the Governor in my capacity as Alcalde.

8th Question. Look at the document now here shown you marked R. V. No 3, and state whether or not the signatures are genuine?

Answer. I have examined said document and the signatures attached thereto are the genuine signatures of the persons they are represented thereon to be. I have frequently seen them write.

(The U. S. Associate Law Agent declines asking any cross interrogatories.

Antonio Ma Pico

Subscribed and sworn to before me this 10th May 1855.

R. Aug. Thompson

414 ND
PAGE 15

Filed in Office
May 10. 1855
Geo. Fisher
Sec'y

Deposition of J. B. Alvarado

United States Land Commission

San Francisco May 10, 1855

On this day before Commissioner R. Reg. Thompson, came Juan B. Alvarado a witness on behalf of the Claimant in case No 751 who after being duly sworn, deposed as follows, his evidence being interpreted by the interpreter to the Board.

414 ND
PAGE 16

The U. S. Adv. Law Agent present.

Questions by Claimants Counsel:

1st Question.

What is your name age and place of residence?

Answer. My name is Juan B. Alvarado, my age 56 years and I reside in San Pablo.

2d Question. Do you know the Garden of San Cayetano, where it is situated?

Answer. I do, it is situated adjoining the Mission of San Jose'.

3d Question. State whether you have now any interest in the said garden, or in the result of this case?

Answer. I have no interest in it. I disposed of any interest to Clemente Pacaud about the year 1850.

4th Question.

State what connection if any existed between you and Andreas Pico at the time of the concession of said garden, in relation to it?

Answer. We were partners in some other business and in this also.

some other business and in this also.

19

5th Question.

Why was the Expediente on file in your name solely, and the concession in the name of Andreas Pico & yourself?

Answer.

After the petition in the said Expediente was presented in my name alone, we agreed that the title should issue for the benefit of both.

414 ND
PAGE 17

6th Question. For whose benefit was the possession obtained?

Answer. The possession was given to me before we made the agreement and before the title was issued, but on a second petition by me the title was issued to both.

7th Question. State whether or not any payments have been made to the Government in consideration of this concession?

Answer. Andreas Pico paid on the joint account three hundred head of Cattle to the Government, or thereabouts.

U. S. Atto. Law Agent declines asking any cross interrogatories.

Juan B. Alvarado

Subscribed and sworn to before me this 10th May 1855.

R. Aug. Thompson
Com.

Filed in Office May 10, 1855
Geo. Fisher Sec'y

20

21 En la ciudad de M. Paso a las visitas

1. 21

En la mision de Sn José a los veinte y siete dias del mes de Agosto de mil ocho cientos cuarenta y cinco. el Alcalde de 1a nominacion de dicho pueblo asumiendo por receptoria con dos testigos de asistencia à falta de escrivano publico presentes los CC. Dn José de Jesus Vallejo Dn Miguel de Pedroena medidores nombrados cuando dicho Alcalde procediesen à la medida de las cien varas de terreno que solicita el Coronel de la milicia auxiliar de este Departto. Dn Juan Bautista Alvarado à las inmediaciones de la finca principal cuyo terreno le ha sido concedido por el E. Sr. Governador del departamto con fecha de doce de Marzo del presente año: puntamte con una huerta de arboles y vina, llamada Cayetano que se halla contigua à dho. Solar y habiendo medido y reconocido el verde dieron principio à dha medida desde la esquina de la huerta por la parte del Sud midiendo cien varas y cuadrando las despues contigua a la pared de la finca y habiendo puesto las mojoneras de estilo sin contradiccion alguna y à satisfaccion del apoderado del interesado procedio en seguida a tomar nota circunstanciada del estado que guarda huerta y vina y habiendo contado los arboles frutales resultan ser cuatrocientos sesenta y parte muy deteriorados asi mismo la vina que contamos tener cinco mil y cien varas porque habiendo rebajado las que estan secas por mi calculo prudente y en quanto se da posesion al interesado le pidio por testimonio y al alcalde 1o de este pueblo le da de haber pasado como dho es y que

Exhibit A.T. No 1. annexed to depo. of Antonio Maria Pico.

414 ND
PAGE 18

se han hecho con la mayor lealtad por los medidores y para que conste en todo tiempo y lugar firmaron con el presente Alcalde y las de asistencia las personas que supieron y se hallaron presentes.

Antonio Mc Piev.

Hugo de Neuvilo. — Ignacio.

Asst.a — José de Jesus Vallejo.

Francisco Mellus.

414 ND
PAGE 19

Se exige al interesado respuesta el papel sellado que debio usarse en este acta para que le sea de y firme en la ante otra fra.

Antonio Mc Piev.

Franco de Castro

Queda tomada razon en el libro 5o del Juzgado à fojas 305. y 306.

Fernandez.
Alcalde 2o

Filed in Office. May 10. 1855

Geo. Fisher.
Secy.

23

Translation of Exhibit No 1 to depo. of A. M. Pico

Mission of San José on the twenty seventh day of August, One thousand eight hundred and forty five.

The Alcalde of the 1st Nomination of said Town acting as Treasurer, with the assistance of two Witnesses in the absence of a Notary Public, In the presence of Don José de Jesus Vallejo, and Don Miguel Pedrorena nominated measurers, ordered them to proceed with the measurement of the hundred varas of Land solicited by the Colonel of the Auxillary Militia of this Department, Don Juan Bautista Alvarado in the vicinity of the principal estate which has been conceded to him by his Excellency the Governor of the Department under date of March the Twelfth 1845 of the present year, as well as a garden and vineyard called Sn Cayetano contiguous to said Solar, and after measuring the line, they commenced the measurement from the corner of the garden on the South side, measuring one hundred varas, and squaring them afterwards, contiguous to the wall of said Estate, and having placed the usual Land marks without any resistance and to the satisfaction of the Authorized agent, of the party interested, proceeded to take a circumstantial account of the state of the garden and vineyard, & having counted the fruit trees, there were found four hundred and sixty trees, and part of them much deteriorated as also the vineyard which are found

414 ND
PAGE 20

to contain five thousand one hundred vines, not counting the dry ones, and in regard to its present state.
I must in justice say that not having been pruned the past year, and being entirely neglected, the first cannot be counted upon for the next two years or more, and having given proofs in to the party interested, he requested testimony thereof, and the 1st Alcalde of this Town gives it above, and that the measurements were taken with the greatest correctness by the measurers, in testimony of all which they signed the present, the Alcalde & the Assistants, the persons who knew it and were present.

(Signed) Antonio Ma Pico
Miguel Pedrorena, Jose de Jesus Vallejo
Francisco Mellus.

414 ND
PAGE 21

The party interested is required to replace the stamped paper which ought to be used in this deed, in order that it may be valid hereafter.
So I the same Judge command and sign on the above mentioned date.

(Signed) Antonio Ma Pico
Salvr M. Castro.

Recorded in Book 5 of this Office pages 305. 306.

(Signed) Fernandez
Alcalde 2d

Filed in Office May 10. 1855
Geo. Fisher,
Secy

3. 25 — 11

A. P. Nº 2. Expediente promovido por el Sr. M. Pico

414 ND
PAGE 22

Angeles. Marzo. 13 de 1845.

Visto lo contenido en esta instancia y estando persuadido el Gobierno de que por el bien del Departamento los terrenos de las Misiones deben pasar á manos laboriosas de particulares para que los fomenten cuanto por el estado de incuria en que se encuentran los pueblos del Distrito: que el Juez a quien corresponda ponga en posesion al Sor. Coronel que suplica de las cien varas de tierra de huerta y viña que pretende: que en acuerdo el auto de posesion pase el mismo Juez con la presente Solicitud y proveido, a este Gobierno uniforme el cumplimiento del estado q. guarda la huerta y la viña concedida Pa que en su vista otorgue la cantidad

Enmo Sor. Gobernador.

Juan B. Alvarado, Coronel de la Milicia Auxiliar de este departamento a S. E. respetuosamte hago presente: que deseoso de establecer una casa dentro de los terminos de la Mision de San José en cuyo establecimiento hay algunos individuos yá avecindados con permiso de los antecesores Gefes de V. E. quienes han sido agraciados con Solares á proporcion de sus solicitudes he de merecer á V. E. se sirva adjudicarme cien varas de terreno á las inmediaciones de la finca principal incluyendole ademas una huerta de arboles y viña que se halla contigua á dicho lugar separada de la principal de la Mision por hallarse casi en estado de abandono ofreciendo no obstante que indemnizaré á los naturales ó al Gobierno con la cantidad en que se considere valer dichos plantos lo mismo que han hecho algunos particulares cuando por el Gobno se les ha concedido algunas casas inhabitadas en Santa Clara y otros puntos por consideracion como llebo referido, a cuyo efecto y pa evitar los tramites que

(2)

que el Sor. Alvarado a de satisfacer en recompensa á la comunidad de la Mision de San José y estando el titulo correspondiente.

Pico.

que produce ofrecerse en esta pretencion que hay desde esta Capital propongo á S.E. (si así lo tubiere á bien) solicite las informaciones que crea convenientes de sujetos que actualmente se hallan en esta Ciudad, de cinos de aquellos puntos con conocimientos extensos de lo que pretendo á V.E. suplico se sirva acceder a esta instancia si así lo creyere de justicia en todo lo que recibiré gracia.

Angeles. Mzo 11 de 1845.

Juan B. Alvarado.

414 ND
PAGE 23

{ Juzgado 1º del pueblo de San José Guadalupe. Agosto 29. de 1845. }

Cumpliendo con el Superior decreto que antecede he pasado á la Mision de San José y estando la posesion que se menciona a beneficio del Señor. Coronel de milicias D. Juan B. Alvarado a visto en la persona de su apoderado, de cuyo acto se le ha dado testimonio al interesado: y debiendo estender el informe que S.E. pide pues á verificarlo en los terminos Sig.tes

3.

La huerta de que se habla se baya con tereo de pared con algunos naturales y contiene cuatro cientos sesenta arboles frutales utiles no haviendo muchos de los demas por hallarse totalmente deteriorados: la viña se compone de cinco mil cien sepas, dejando por su puesto sin contar en este numero los inutiles que son bastantes (esto por un calculo prec.te) pero en cuanto a sitado que de ella debo decir en Justicia que no haviendo podido en el año pasado y dando esta

414 ND
PAGE 24

amente desatendida no se puede contar con su justo en los dos primeros años. Es lo que puede informar á V. E. en obsequio de la verdad y en cumplimto del anterior oficio ya citado.

Antonio Mª Pico.
E. S. Gobor

Juan B. Alvarado Coronel de la Milicia Auxiliar de este Departamento ante V. E. respetuosamte dijo: que habiendo por disposicion del Gobno obtenido la gracia de que se pusiese a mi disposicion la buerta llamada Sn Calletano de la pertenencia de la Mision de Sn. José me encuentro hoy en posesion de la expresada unas como para considerarme dueño en propiedad de ella sea necesario que el Gobno se sirva extenderme el titulo correspondte ruego á V. E. que me haga la gracia de decretarlo así para cuyo efecto acompañó los documentos de concesion y posesion correspondientes haciendo presente al mismo tiempo para que se sirva tener S. E. las consideraciones de justicia que el estado decaido en que se encuentra dicha finca se hara producir en algunos años lo preciso para remunerar los gastos que se emplearan en su reparacion por cuya causa me atrevio a ofrecer en retribucion de su valor ya sea a favor de los mengenos propietarios á al Gobno la cantidad de doscientos cuberas de ganado mayor.

Por tanto A V. E. suplico se sirva favorablemente a mi solicitud en que recibiré gracia guardo lo necesario.

Monterey Nbre. 1º de 1846

Juan B. Alvarado

otro Si. Sirvase V. E. admitir me esta en papel comun por no haber del sellado correspondte en este lugar.

Alvarado.

414 ND
PAGE 25

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

I John C. Hays, Surveyor Gl of the United States for the State of California and as such now having in my office and under my charge and custody a portion of the archives of the former Spanish and Mexican Territory or Department of Upper Calif^a by virtue of the power vested in me by law Do hereby certify that the five preceding & hereunto annexed pages of tracing paper numbered from one to five inclusive exhibit a true and accurate copy of a certain document now on file and forming part of the said archives in this office.

In testimony whereof I have hereunto signed my name officially and caused my seal of office to be affixed at the City of San Francisco this twenty fourth day of March. 1855.

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

Filed in office May 10. 1855.

Geo. Fisher Secy.

29

Translation of Exhibit R. P. No 2 to depo of A. M. Pico

To his Excellency the Governor.

Juan B. Alvarado Colonel of the Auxillary Militia of this Depart=ment before your Excellency respect=fully represents: that being desirous of establishing a house within the limits of the Mission of San José in which estab=lishment there are some individuals al=ready residing by permission of your Excel=lency's predecessors, which individuals have received grants of lots according to their respective petitions.

414 ND
PAGE 26

I have to ask of your Excellency that you be pleased to grant to me, one hundred varas of Land in the vicinity of the main building, in cluding moreover an orchard of trees and a vineyard which is contiguous to said lot, but separate from the princi=pal one of the Mission, as this property is almost completely abandoned, & offering nevertheless to indemnify or satisfy the natives or the government for the value of said plants, as has been done by other persons. When the government has granted them vacant houses at the Mission of Santa Clara and other places, on account of their being in the condition which I have stated, for which purpose and in order to avoid the delays which may arise in deciding upon this peti=tion, on account of the great distance from this capital, I suggest to your Excellency, (if you should think fit,) to take the informations which you may think necessary from persons who

are actually in this City, who are persons living in that neighborhood and well informed in relation to what I solicit. I beg of your Excellency that you be pleased to accede to this my petition, if you think it just, in which I shall receive a favor &c.

Angeles March 11th 1835

Juan B. Alvarado.

Angeles March 12th 1835.

Having seen the contents of this petition and the Government being convinced that it is for the prosperity of the Department that the lands of the Mission should pass into the hands of industrious individuals who may improve them, and also taking into consideration the decaying condition of the Indians, I decree & order, That the respective Judge may put the Sor Colonel in possession of the one hundred varas of land, Orchard and Vineyard which he solicits; that the act of possession being concluded, the same Judge will send to this Government, a minute report stating the actual condition of the Orchard and Vineyard which have been granted, as also the present petition and decree, in order that in view thereof the Government may know what sum of money the Sor Alvarado will have to pay over to the Community of the Mission of San José for the same, and that the title be issued.

Pico

414 ND
PAGE 27

1st Tribunal of San José Guadalupe
August 27th 1845.

In obedience to the foregoing Superior decree, I have gone to the Mission of San José, and I have given the possession therein mentioned to the Señor Colonel of Militia D. Juan B. Alvarado represented by his agent, of which act of possession I have given a certified Copy (testimonio) to the interested party and having to give the report which your Excellency asks, I proceed to do it as follows, to wit; the orchard spoken of is enclosed with a wall partly fallen down, and it contains four hundred and sixty useful fruit trees, without mentioning others, which are useless; the Vineyard contains five thousand, one hundred vines, not counting of course in this estimate, those which are useless, which are a great many, but in regard to general condition of the same, I must in justice say, that having not been pruned last year, and having been entirely neglected, they cannot be expected to produce any thing for the next two years. This is what I can say to your Excellency in obedience to the said foregoing decree.

Antonio Ma Pico

414 ND
PAGE 28

To His Excellency the Governor

Juan B. Alvarado Colonel of Auxillary Militia of this Department before your Excellency respectfully represents; that having, through a determination

of the Government, obtained the privilege of putting to my disposal the orchard called Sn. Cayetano which is of the property of the Mission of Sn. Jose'. I am now in possession of the same, but as in order to be considered as the owner in full property of the same it is necessary that the Government should issue to me the corresponding title, I pray of your Excellency that you be pleased to decree accordingly for which purpose I annex hereto the documents which are the evidence of the concession and possession of the same; representing to you likewise, in order that your Excellency may act in justice that on account of the received condition of the property, the same will not produce to your petitioner for some years even enough to remunerate him for the expense of repairs, for which reason I offer in payment therefor, either to the Indians or to the Government, the number of two hundred head of Neat Cattle.

414 ND
PAGE 29

Therefore I pray of your Excellency that you may decree favorably to my petition wherein I shall receive a favor &c. Monterey March 1st 1846

Juan B. Alvarado

addition

Be pleased to admit this on common paper for want of the corresponding stamped, in this place

Alvarado

Filed in Office May 10. 1855 Geo. Fisher Secy

Filed in Office May 10. 1855 Geo. Fisher Sec'y

Pio Pico Gobernador Constitucional del Depart.to de California.

Por cuanto Don Andres Pico y Don Juan B. Alvarado han solicitado para su beneficio personal y el de sus familias la huerta de San Cayetano con mas de cien varas de frente al Sur de dicha huerta y de fondo todo el terreno que comprende para el Oriente hasta la orilla de las lomas inmediatas con inclusion del Ojo de agua dentro de este terreno, practicadas previamente las diligencias y averiguaciones concernientes y en uso de las facultades con que me hallo autorizado por el Supremo Gobierno á nombre de la Nacion he venido en conceder á los espresados Don Andrés Pico y Don Juan B. Alvarado la huerta el terreno que se menciona en la Mision de San José, declarando le la propiedad de ello por las presentes letras todo de conformidad con la ley de 18 de Agosto de 1824 y art.o 5.o del reglamento Supremo de 21 de Noviembre de 1828 y bajo las condiciones siguientes.

Exhibit R.S. no 3. annexed to Depo. Antonio Mario Pico.

414 ND
PAGE 30

1.o Pertenece á Don Andres Pico y Don Juan B. Alvarado la huerta de San Cayetano en la Mision de San José con mas de cien varas de frente al Sur inmediatamente de dicha huerta y de fondo todo el terreno que le comprende entre el ojo de agua que riega dicha huerta hasta llegar á las lomas inmediatas del Oriente.

2.o Por el beneficio de roturacion y aprovecham.to con que los espresados Andres Pico y Juan B. Alvarado reciben la huerta de San Cayetano

y terrenos referidos en la Mision de San José pagaran a este Gobierno por via de indemnizacion doscientas cabezas de ganado mayor a cuyo pago estaran dispuestos en el tiempo que a este Gobierno le parezca conveniente exijir.

414 ND
PAGE 31

Dada en la Ciudad de los Angeles, Capital del Departamento de California en papel comun por falta de sellado a los veinte cinco dias del mes mayo del año de mil ocho cientos cincuenta y seis

Pio Pico

José Mathias Moreno.
Secr. Gral.

Queda tomada razon de este Superior Superior libro respectivo.

Moreno.

Filed in Office - May. 10. 1855.

Geo. Fisher.
Secy.

M.L.

35

Translation of Exhibit R.S. No 3 annexed to depo. of R. M. Pico.

Pio Pico Constitutional Governor of the Department of California.

Gov't Stamp

Whereas Don Andreas Pico and Don Juan B. Alvarado have solicited for their personal benefit and that of their family, the Orchard de San Gaytano, with a hundred varas more in front to the South of said Orchard and in the back ground the whole land as comprised towards the East, to the border of the adjoining hills, inclusive of the Spring of Water within said Land, the steps and investigations concerning thereto having been first had and taken; and in exercise of the powers wherewith I am authorized by the Supreme Government, in the name of the Nation, I have granted to the said Don Andreas Pico, and Don Juan B. Alvarado, the orchard and land as above mentioned in the Mission of San Jose; declaring to them the ownership thereof by these presents, all in conformity with the Law of 18th of August 1824 and Art. 5th of the Supreme Regulation of 21. of March 1828, and under the following conditions.

1st The Orchard de San Gayetano in the Mission of San José, with a hundred varas more in front to the South immediately to said Orchard, and in the back ground the whole Land as comprised between the Spring of Water, which irrigates said orchard until reaching the adjoining hills to the

414 ND
PAGE 32

East, pertains to Don Andreas Pico y Don Juan B. Alvarado.

2nd For the benefit of plowing it for the first time, wherewith the said Andreas Pico and Juan B. Alvarado receive the Orchard de San Cayetano and land above mentioned in the Mision of San José, they shall pay this government in the way of compensation two hundred head of neat cattle, to which payment they shall be ready at the time as this Government may deem it fit to receive the same.

414 ND
PAGE 33

Given at the City of Los Angeles Capitol of the Department of California on common paper for want of stamped paper the twenty fifth day of the Month of May one thousand Eight hundred & forty six.

Pio Pico

José Matias Manáno
Secy ad interim

Record of this superior title is taken in the proper Book.

Moreno

I certify the above to be true and correct translation

Geo. Fisher
Secy

39

Juan B. Alvarado
To
C. Panand

Conveyance

This Indenture made and entered into this twenty third day of December in the year of our Lord One thousand eight hundred and fifty, by and between Juan B. Alvarado of the first part and Clement Panand of the second part, all of the State of California, Witnesseth, that the said Juan B. Alvarado, for and in consideration of the sum of Five Thousand dollars to him in hand paid by the said Clemente Panand, the receipt whereof is hereby acknowledged and confessed, hath granted, bargained and sold, and by these presents do hereby grant bargain sell convey, alien and confirm unto the said Clemente Panand and unto his heirs and assigns forever, One undivided half of the following described property lying and being situate on or near the Mission of San Jose County of Santa Clara and State of California to wit; The one undivided half of the Garden or Vineyard known and called as the Cayetano, which was granted by the former Government, and jointly by Don Andreas Pico and me owned, and which said Garden or Vineyard was leased by us the said Alvarado and Pico to Pierre Esteem Vignes who has used and occupied the same by virtue of said lease for the last three years more or less. To have and to hold the said one undivided half of said property together with the tenements and appurtenances thereunto belonging

414 ND
PAGE 34

or in any wise appertaining unto him the said Clemente Parand his heirs and assigns forever, and I the said Juan B. Alvarado for myself and my heirs, executors, and administrators, do covenant with the said Clemente Parand his heirs and assigns, that I am lawfully seized in fee simple of the said part of said premises; that the same is free from all incumbrance; that I have good right to sell and convey the same to the said Parand his heirs and assigns forever, as aforesaid, and that I will, and my heirs executors and administrators shall warrant and defend the same to the said Clement Parand his heirs and assigns forever, against the lawful claims and demands of all persons.

414 ND
PAGE 35

In witness whereof I the said Juan B. Alvarado have hereunto set my hand and seal the day and year first above written.

Juan B. Alvarado (Seal)

Executed and delivered
in presence of
A. C. Campbell.

State of California }
County of Santa Clara }

On this 23d day of December A. D. 1850, before me a Notary Public in and for said County personally appeared Juan B. Alvarado personally known to me to be the person

personally known to me to be the person

39

whose name is signed to the foregoing instrument as a party thereto and acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

Witness my hand and private seal having no official seal, this day and year above written.

P. O. Minor (Seal)
Notary Public

414 ND
PAGE 36

Filed 10 ½ o O. Clock A. M.
23d December 1850.

I. T. Richardson R. C. C.
I. Flournoy Dep'ty

County Recorder's Office, County Santa Clara, State of California.

I hereby certify that the foregoing is a full, true and correct copy of an instrument in writing, (Juan B. Alvarado Deed to Clemente Pamand,) now on Record in book C. of Deeds, on pages 257 in this office. Witness my hand and official seal this 5th day of April A. D. 1855, at office in the City of San Jose.

(Seal) S. A. Clark County Recorder
By R. Lewis Deputy.

Filed in Office May 9. 1855
Geo Fisher Secy

40

2/457

41

Opinion of the Board

Manuel Pavons
vs
The United States

For a lot 1000 by 200 varas in size called the Garden of San Gaytano in Santa Ana County

In this Petition to the Commission the claimants alleged the issuing of a grant of the land by Manuel Pico to Juan B. Alvarado in August 1845 and a subsequent conveyance by said Grantee to them

No proof is offered tending to substantiate any of the allegations of the Petition

The claim is sustained by no evidence and must consequently be rejected

Rejected

Filed in Office February 1855

Geo Fisher
Secretary

Decree

Manuel Pavons
vs
The United States

Metris leave on hearing the proofs and allegations discovered by the Commission that the claim of the said Petitioners is not valid

and it is therefore decreed that their application for a confirmation thereof be denied

Alphens Pelch

Reuy Thompson

S B. Farwell

Commissioners

Filed in Office February 1855

Geo Fisher
Secretary

414 ND
PAGE 37

and it appearing to the satisfaction of this Board that the land hereby adjudicated is situated in the Northern District of California it is hereby ordered that the transcripts of the proceedings and of the decision in this case and of the papers and evidence 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 U S District court for the Northern District of California and the other be transmitted to the attorney General of the United States

414 ND
PAGE 38

43

Clement Ranand et al.
vs
The United States.

For the place called the Orchard of San Cayetano in Santa Clara County alleged to be 110,000 varas long by 2000 wide —

Opinion of the Board delivered by Comr. Felch

The claimants allege that a grant was made by Governor Pio Pico to Juan B. Alvarado and the petitioner Andres Pico on the 26th day of May 1846. — The petitioner Ranand, claims title to an undivided half of the premises under a deed of conveyance thereof to him, executed by said Alvarado, December 23. 1850, a certified copy of which from the Recorder's Office is given in evidence.

414 ND
PAGE 39

The grant issued by the Governor is presented and proved. The land conceded is therein ~~conceded~~ described as the garden or orchard (la huerta) of San Cayetano, with certain other lands adjoining it, but the description is not sufficiently definite to identify any portion of land lying outside of the orchard limits. The petitioners undoubtedly in consideration of this fact, have confined their claim, as set out in their petition to the premises known as the Garden of San Cayetano.

From the testimony, both oral and documentary, it is evident that the premises claimed was one of those ancient orchards or gardens which existed at all the Missions, under the charge of the priests, planted by their care and used for the manifold purposes pertaining to their subsistence & comfort and the support of divine service — In the case of Bishop Alemany (Case No. 609) we held that property of this character was dedicated to the Church by the government and especially so by Decree of the President of the Mexican Republic of November 17th 1840. By the proclamation of Governor Micheltorena of March 29. 1843 (See Exec. Doc. No. 17. Ho. Reps. 31 Cong. 1 Sess. p. 161) this property was restored to the possession of the priests — No portion of the premises could then be rightfully granted; it belonged to the

Church. When subsequently Governor Price proposed to make sale of property of this description, the Supreme Government of Mexico interfered with its prohibition — The decree emanating from the President of the Republic prohibiting such sales to be made, and bearing date November 14. 1845, was received by Governor Price before this grant was issued. We have fully considered the effect of this decree in Case No. 110. wherein Andres Pico and others are claimants —

414 ND
PAGE 40

Under the decrees above mentioned the authority of Governor Pico to grant this property, if it existed before, ceased, and his act in the face of the prohibition, was unauthorized and void.

A decree adverse to the claimant must consequently be entered.

Rejected.

Filed in Office Dec. 18' 1855

Geo; Fisher.

Secy.

Decree.

Clement Ranand & al.
vs
The United States.

In this case on hearing the proofs and allegations it is adjudged by the Commission that the claim of the said petitioners is not valid; and it is therefore decreed that their application for the confirmation thereof be denied —

Alphens Pelch.
R. Aug. Thompson. } Commissioners —
S. B. Fanvill.

Filed in Office Dec. 18. 1855.

Geo; Fisher. Secy.

414 ND
PAGE 41

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 Forty four — pages, numbered from 1 to 44, both inclusive, to contain a true, correct and full 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, on file in this Office, in Case No. 751. on the Docket of the said Board, wherein

Clement Vanoud, et al, are —

the Claimants against the United States, for the place known by the name of Garden of San Cayetano —

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~~-eightieth —

Geo. Fisher

414

U. S. DISTRICT COURT

Northern District of California.

No. 414 — 1414 ND

THE UNITED STATES,

vs.

Clement Navarro et al.

TRANSCRIPT OF THE RECORD

FROM —

BOARD OF U. S. LAND COMMISSIONERS,

In Case No. 451

Filed, February 15, 1856

S. A. Roome,

Clerk.

United States District Court
Northern District of California

No. 414

414 ND
PAGE 42

The United States
vs
Clement Pomaud et al

In the above cause, numbered -751- upon the Docket of the United States Board of Commissioners to ascertain & settle private land Claims in the State of California - the said Board having rendered its decision rejecting the claim and title of the claimants to the lands named the garden of San Cayetano as set forth in the transcript heretofore filed with the Clerk of said Court in said Case No. 414

Notice is hereby given that it is the intention of the claimants herein to prosecute their appeal from said decision

S. W. Holladay
Claimants Attorney

U.S. District Court
Southern Dist of California

No. 414

The United States
vs
Clementi Panaccioni

Notice of intent to prosecute appeal

Filed
May 6. 1856.
Chas
Deputy.

2

414 ND
PAGE 43

414 ND
PAGE 44

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

Clement Pomard and Andreas Pico, petitioning for a confirmation of their claim to the tract of land hereinafter described respectfully represent

That on the 2d day of March 1853 they filed their petition and claim for confirmation to the said tract of land with the Board of U.S. Land Commissioners to ascertain and settle private Land Claims in the State of California, it being case No 751 on the Docket of said Board

That on the 10th of May 1855 by Stipulation in writing duly signed they filed their amended petition for the same.

That they duly filed their documentary evidence of title with said Board of Commissioners and introduced their testimony in proof of their written evidence of title, and other pertinent and relevant evidence touching their title and possession to and of said land.

That upon the papers & evidence of their claim to said land, being submitted for decision, said Board rendered their Decision and Opinion in

writing Rejecting the said claim of these petitioners to said land

That on the 6th day of May 1856 petitioners duly filed with the clerk of this Court a Notice in writing of their intention to prosecute an appeal from said Opinion and Decree of said Board, rejecting said claim

414 ND
PAGE 45

That a full transcript of the proceedings and decision in said cause No 751 and of the papers and the evidence on which the same is founded, was duly prepared and certified and is now on file in this Honorable Court and is known as Case No 414 on the Docket of Land Cases, all of which proceedings in said transcript are hereby referred to and made a part hereof -

That these petitioners in said Case No 751 before said Board of Land Commissioners, and now hereby, claim title to the following described tract of land which they pray may be confirmed to them, namely: a tract of land situated at the Mission of San Jose in the present County of Alameda in the State of California and within the jurisdiction of this Court being about two hundred Varas in width from north to south and about One thousand Varas in length from East to West a little more or less which tract of land embraces and includes the old Orchard and Vineyard called "San Coyitano", and a spring of

called San Leyland, and a spring of

water to the east thereof near the foot of the hills, and is bounded and described as follows: beginning on the east side of the main public road running North and South through the Mission of San Jose at the North West corner of said old Orchard and Vineyard, that is at the intersection of the old walls forming the North and West boundaries thereof; thence southwardly along the west wall and one hundred Varas beyond and south of the southerly end thereof; thence eastwardly along the fence parallel with and one hundred Varas southerly of the old wall which was formerly the southerly boundary of said Orchard and Vineyard and parallel therewith to the foot of the hills one thousand Varas a little more or less including the spring of water within the east line thence Northwardly at right angles to said south line to a point in range with the line of the old north wall of said Orchard and Vineyard; thence Westwardly to the North east corner thereof and along the North wall of said Orchard and Vineyard to the point of beginning.

414 ND
PAGE 46

The nature of the claim of petitioners to said land is as follows to wit,

On the 11th day of March 1845,

Don Juan B. Alvarado presented his petition in writing to Pio Pico being Governor of California, praying a grant of the said tract of land, showing in his petition that said Orchard and Vineyard were then "almost completely abandoned, and offering indemnity to the natives or to the Government for the value of the plants (meaning the fruit trees in said Orchard and Vineyard) as has been done by other persons when the government has granted them Vacant houses at the Mission of Santa Clara and other places, on account of their being in the condition stated".

414 ND
PAGE 47

On the next day thereafter to wit on the 12th of March 1845 the said Governor Pio Pico being thereto duly authorized and empowered, did by his writing entered on the margin of said petition & by him duly signed, (reciting that "the Government being ~~satisfied~~ convinced that it is for the prosperity of the Department that the lands of the Mission should pass into the hands of industrious individuals who may improve them, and also taking into consideration the decaying condition of the Indians") directed to the proper local magistrate, Order and Decree said Magistrate to put the said Juan B. Alvarado into possession of the One hundred Varas of land orchard and

Vineyard which by petition he had "[illegible]

Vinyard which he petitioned for, that "the act of possession being concluded, the same judge should send to the Government a minute report stating the actual condition of the Orchard and Vinyard which have been granted in order that the Government may know what sum of money the Señor Alvarado will have to pay"&c

414 ND
PAGE 48

That on and prior to the 27th day of August 1845 Antonio Maria Pico the then Alcalde to whom said Order and Decree of said Governor were directed, in obedience thereto, and by the aid of Measurers and apistants for that purpose selected, measured off said land petitioned for, and erected monuments to designate the boundaries thereof and put the said Alvarado into the possession of the same "without any resistance", and also took a circumstantial account of the state of the Orchard and Vinyard, counting the fruit trees and the Vines therein, all of which acts he duly reported to the Government and also gave to the said Alvarado a certified copy of the same, all of which acts duly proven appear in the certified copy of the proceedings in this case,

That on the 25th of May 1846 (the said Alvarado being then in the possession of said land ever since the said

acts of the 27th of August 1845, giving him the judicial possession thereof) at the instance and request of the said Alvarado and by agreement between him & the said Andreas Pico a further and a final title was duly executed and issued by the said Governor Pio Pico to the said Juan B. Alvarado and Don Andreas Pico jointly, thereby "declaring to them the Ownership" of the said land on certain terms of payment therein mentioned which the said grantees should be ready to make at the time the government might deem fit to receive the same,

That in pursuance of the terms of payment mentioned in said grant the said grantee Andreas Pico did on account of himself and the said Alvarado, upon demand of the Government of California afterwards, about the beginning of June 1846 make the payments for said grant to the full satisfaction of said Government,

That on the 23d of December 1850 the said Juan B. Alvarado by his Warranty Deed of that date duly executed and acknowledged, sold assigned and transferred to the said Clement Pana and, one undivided half, being all his right title and interest in and to the lands aforesaid which deed was duly recorded in the proper County, a duly certified copy of which appears in the said certified record in this case, whereby the said Clement Panaud became and

414 ND
PAGE 49

the said Clement Romaud became and now is the lawful owner and holder of all the former right title and interest of the said Alvarado in and to the lands aforesaid and every part thereof with the appurtenances thereunto belonging

414 ND
PAGE 150

That all the time since the 29th. day of August 1845, when the judicial possession of said land was given to said Alvarado, he and these petitioners, some or all of them have been and the petitioner Clement Romaud now is in the actual possession of the said granted land as above discribed, cultivating the same as an Orchard Vineyard and garden

Wherefore these petitioners Andreas Pico and Clement Romaud pray this Honorable Court to review and revise the decree of said Board of United States Land Commissioners rendered in this case and pronounce a decree in favor of the validity and in confirmation of the said grant and concession to the said grantees and to these petitioners claiming through and under them,

S. W. Holladay
Atty for Pico & Romaud

HOLLADAY & HOLLADAY
ATTORNEYS AT LAW
414 MONTGOMERY ST.
SAN FRANCISCO

No. 414.

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

Clement Pomeroy & Andrew Pico

vs

The United States

Petition to Review Decision of Land Comrs

Filed April 20. 1857.
W. H. Chevers,
Deputy.

414 ND
PAGE 51

S. W. Halladay
Atty for Petitioners
100 Merchant Street

UNITED STATES DISTRICT COURT,
Northern District of California.

Clement Ravaud & als
vs
The United States

San Francisco, April 30th 1857

414 ND
PAGE 52

ON this day, before Ino A. Monroe a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came José Jesus Vallejo & A. Maria's ~~a~~ witness~~s~~ produced on behalf of the Claimants in Case No. 414, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 751 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows —~~his~~ their evidence being interpreted by — J. E. Grimes. a sworn interpreter

PRESENT: Halliday for Claimants & the U. S. Dist. Atty.

QUESTION BY Counsel for Clmts.

What is your name age and occupation?

Answer My name is José Jesus Vallejo I reside in San José and am 57 years of age

Witness being shown "Exhibit R.J. No 1 annexed to deposition of Antonio Maria Pico" contained in the Transcript on file in the U.S. Dist. Court for the Northern District of California, says it is a true copy of the original on file in the Surveyor Generals Office and which original I

have this day seen.
I recognize the signatures on the original of Antonio Maria Pico & Miguel Pedoreno and my own signature. I signed the document at the time.
Question. Did the acts of possession recited in said document occur as therein stated.
Answer They did.
Antonio Maria Pico was at the time a Judge of the Pueblo of San José. I assisted in measuring the land mentioned in the document alluded to.
I held no Public Office at that time. Antonio Maria Pico assisted in measuring & giving possession. He then resided in San José and the land alluded to was within his jurisdiction.
I heard of a final title being given to Don Andreas Pico and Governor Alvarado jointly but I did not see it.
I saw this morning for the first time in the Surveyor Generals Office an original title to Don Andreas Pico and Governor Alvarado, of "Exhibit R 3 No 3 annex"ed to the deposition of Antonio "Maria Pico" now on file in the United States District Court for the N.D. of Cala. I recognized the ~~signatures~~ seal as the one used at the time by the Government

414 ND
PAGE 53

414 ND
PAGE 54

The possession at the date of the act of possession was given to Amaud as the agent of Alvarado and he continued in possession as the agent of Alvarado. Amaud cultivated the land and took care of the trees &c. Sometimes he had men assisting him. Amaud was in possession as Alvarado's agent for two years more or less. After Amaud left a Frenchman by the name Bigues went into possession under a lease from Alvarado. I heard that the lease was jointly given by Alvarado and Pico. Bigues continued to cultivate the land. I once held the office of Administrator of the Mission and was familiar with the Mexican Laws at the time I heard of the title of Alvarado and Pico at the time but I did not see it. I believed it to be a good title at the time and believe it was recognized as valid.
(Dist Atty objects to the last Question and Answer.)

414 ND
PAGE 55

I know when the vineyard was planted and at the time I was Administrator of the Mission. The Mission at that time was in charge of the Government. I remember when possession was given to Alvarado that on the Southern side One Hundred varas from the Wall stakes were put up to mark the boundary

Cross-Exd. There was always a priest living at the Mission

J. D. Vallejo

Sworn to & subscribed before me this 30th day of April A.D. 1857

Jno A Monroe
U. S. Commisp.

414 ND
PAGE 56

Arno Moubè being sworn says I am 48 years of age and reside at San Losè. I am the person of whom Mr. Wallace spoke in the testimony just given by him -

A written order was given to me by Alvorado to take possession of the Orchard of San Cayetano in the Mission of San Losè and I took possession in the month of August in 1845. The judicial possession was given to me by the Alcalde Antonio Maria Pico as the agent of Alvorado in August 1845. I saw the paper signed by the Alcalde and the Measurers. I saw the same paper to day in the Surveyor Generals Office. It is the same original paper which I saw in 1845, and it was signed at the time it bears date.

~~I saw the final title which was given by Pico to Andreas Pico and Governor Alvorado. I saw the title at the time it was issued and I myself delivered it to~~

I continued in possession two years as the Agent of Alvarado after the Alcalde gave me possession. There was no produce from the vines for two or three yers. I with the aid of some indians continued to cultivate the vines.

414 ND
PAGE 57

Did you hear from Alvarado or any one else that Don Andres Pico was a part owner of the land (Objected to)

Answer I did - Alvarado himself told me so. at the time. I first took possession.

After I left Peter Bigues took possession - Bigues is now in France - I think Bigues leased it from Governor Alvarado. Bigues continued in possession three or four years and cultivated the land -- After the land was measured we put down stakes to mark the boundaries -

The monuments were put on the southern line a hundred ~~yards~~ varas from the south wall

of the Orchard.

Cross-Exd. There was one Priest at the Mission, living there at the time. He performed service at the time.

I cultivated the land by taking one of the Orchard. Vignes continued to cultivate it in the same way. The garden was enclosed by a wall. it was enclosed by an adobe wall when I took possession. The wall was in a delapidated condition

414 ND
PAGE 58

Sworn to & Subscribed before me this 30th day of April A.D. 1857.

Levi A. Monroe
U.S. Commisp.

Ezno Menbo's

414.

U. S. Dist. Court.

The United States.

— ads —

C. Priaud, et als,

Depositions of
Vallejo & Maubes.

Filed April 30. 1857.
W. H. Chevers,
Deputy.

414 ND
PAGE 59

To the Honorable Ogden Hoffman Jr.
Judge of the District Court of the United States for the Northern District of California.

414 ND
PAGE. 60

Clement Pavand & Andres Pico the petitioners herein respectfully represent & show unto your Honor that they are the present claimants and owners of the following described piece or parcel of land. Situated at the Mission of San Jose in the present County of Alameda & within the Northern District of the State of California. which is known & called "San Cayetano" which piece or tract of land including an old orchard & vineyard is bounded as follows to wit - beginning on the east side of the main public road running north and south through the said Mission of San Jose at the north west corner of said orchard & vineyard, that is at the intersection of the adobe walls forming the north and west boundaries thereof running thence southwardly along the west wall & one hundred varas beyond and south of the southerly end of said west wall, thence eastwardly along the board fence one hundred varas southwardly of and parralel with the old wall which was formerly the southand boundary of said orchard & vinyard to the foot of

the hills, one thousand varas - a little more or less, so as to include the Spring of water within the last line: thence northwardly to a point in range with the line of the old north wall of said Orchard and Vinyard thence westwardly to the north east corner there-of and along the north wall of said orchard & vineyard to the point of beginning; the said tract or parcel of land being about one thousand varas in length from east to west and two hundred varas in width from north to south. —

414 ND
PAGE 61

The title of these petitioners to the said tract of land is based upon the following acts, proceedings & title papers to wit.

First. A petition written and dated the 11th day of March 1845. presented to Pio Pico then constitutional Governor of the Territory of California for a grant of said land.

Second. An Act. Decree & Grant indorsed upon the margin of said petition, dated the ~~ninth~~ day thereafter to wit on the 12th day of March 1845. Signed by said Pio Pico Governor addressed to the proper local magistrate, whereby said Governor Pico decreed & ordered the respective Judge to put the petitioner into possession of the said land.

Third the Act of Judicial possession being the proper evidence of the measurement of

the paper evidence of the measurement of said land, the erection of the land marks and boundaries thereof and the delivery of the possession of the same to the party interested, signed by Antonio Maria Pico - the then Alcalde to whom said Decree of Governor Pico was directed and also signed by several witnesses and assistants to - the said act of possession. —

414 ND
PAGE 62

Fourth - A petition for a definite & final title paper for said land (made pursuant to said act of possession) addressed to the said Governor Pio Pico dated the 1st day of March 1846. —

Fifth - A full definite & final title - paper to said land based upon said various other papers and acts of possession whereby the said Governor Pio Pico declared to Juan B. Alvarado and Andres Pico the full title and - ownership in and to the said tract of land, by means of all which various acts and papers the said Juan B. Al- -varado and Andres Pico became & were the owners in fee simple absolute of the land above described, each one of them owning an equal undivided one - half thereof

Sixth - A deed executed by said Alva -rado in due form on the 23d

day of December 1850. whereby he bargained sold and conveyed his undivided half of said land to the petitioner Clement Panaud who thereby became and still is the owner of all the said one half interest of the said Alvarado in and to said land, the said Andres Pico being the present owner and claimant of the other undivided half thereof, —

414 ND
PAGE 63

Besides a continued use occupation and cultivation of said land by the original grantees and these petitioners from the date of the act of Judicial possession on the 29th of August 1845 to the present time, during all of which time, these petitioners & the said Alvarado have been in the sole exclusive an adverse possession of said land. —

That a full copy of all and singular said acts of possession - petitions decree & deed duly proved & certified appears in the record or certified transcript from the board of United States Land Commissioners as now on file, and known as case No 414 in the Docket of land cases in this court, which for further particularity is hereby referred to, and made a part of this petition. —

Petitioners aver that their said title papers as they verily believe are all genuine, bona fide & valid acts, constituting the first and only valid title to said land and that they entitle these petitioners

The first and only [illegible]
and that they entitle these petitioners
to preference and priority to a patent
from the United States, over any and
all other claimants to said land.

That these petitioners are now prose-
-cuting their claim for a confirmation of
said title to said land in said case
No. 414 on the docket of land cases
in this Court, and they expect and be-
-lieve in due time their title there-to
will be confirmed to them by decree
of this Court.

414 ND
PAGE 64

Your petitioners
further show that the Roman Catholic
Archbishop, the Rt Reverend Bishop
John S. Alemany in case No 425 on the
Docket of land cases in this Court is
a petitioner for a part of the tract above
described to wit the part thereof inclu-
-ded within the limits of the old Adobe
wall which formerly marked the
boundaries of said old Orchard &
Vineyard called "San Cayetano" which
measured & included 8 acres, 3 roods,
& 14 perches which by the final decree
of this Court, has been confirmed to
him the said Alemany who is about
to apply to the Commissioner of the
General Land Office for a patent to issue
to him for the said land last men-
-tioned, and who will apply for and
get a patent for the same unless res-
-trained by the injunction of this Court

wherein these petitioners will be greatly injured in their rights in the premises

These petitioners dispute and and contest the claim of title of the said Bishop J. S. Allemany to said land and every part thereof, and aver that his claim thereto is illegal and invalid.

414 ND
PAGE 65

Therefore these petitioners pray your Honor to hear & determine the same, & for a final decree of this ~~same~~ Court declaring the claim of the said J. S. Allemany and all others claiming said land through or under him to be invalid & void, and upon the final hearing hereof to grant an injunction to restrain him the said John S. Allemany from suing out a patent for said land until the title thereto has been finally decided as between him and these petitioners, and thereafter that said injunction may be made perpetual. And for such other & further relief in the premises as may be just & equitable.

S. W. Holladay
Atty for Petitioners

State of California
County of San Francisco

414 ND
PAGE 66

Clemente Panaud on after being duly sworn deposes and says that he has read the foregoing petition & knows the contents thereof and that the facts as therein stated are true of his own knowledge except as to those that are therein stated on his information and belief and those he believes to be true,

Clemente Panaud

Sworn & subscribed before me this 19th day of May 1857
W. H. Chevers.
Deputy Clerk. N. D.
Dist. Court. N. D. of Cal.

In the Matter of
The Petition
of
Manuel Panaud
& Andres Pico

— vs —

J. S. Alemany
concerning the
"San Cayetano"

414 ND
PAGE 67

S. W. Holladay
Atty for Petitioners
100 Merchant St

Monday June 22/59

On the matter of the Petition of Panaud & Pico

In the Matter of the Petition of Clement Pamard and Andres Pico

vs

J. S. Almany

414 ND
PAGE 68

On reading and filing the foregoing and annexed petition of Clement Pamard and Andres Pico for an Injunction, I hereby appoint Monday the 22d day of June 1857 at 11½ o'clock or as soon thereafter as practicable in the forenoon of that day, at the Court Room of the District Court of the United States for the Northern District of California in the City of San Francisco as the time and place of hearing the said petition, and I direct that a copy of said petition and of this order be served upon the claimants in the said petition named at least thirty days before the time herein before appointed for the hearing of said petition.

May 19, 1857

Ogden Hoffman
Dist Judge

414

In the Matter of
The Petition
of
Clement Pinard
& Andres Pico
vs
John S. Alemany
concerning the
"San Gaytano"

Filed June 22. 1857.
W. H. Chevers,
Deputy.

414 ND
PAGE 69

S. W. Holladay
Atty for Petitioners
105 Merchant St

Before his Honor the Judge of the District Court of the United States for the Northern District of California.

In the Matter of the Petition of Clement Panaud and Andres Pico

vs.

Joseph S. Alemany, Archbishop &c.

414 ND
PAGE 70

The Demurrer of Joseph S. Alemany, Archbishop &c. to the Petition of Clement Panaud and Andres Pico.

The said Joseph S. Alemany, Archbishop &c. by protestation not confessing or acknowledging all or any of the matters and things in the said Petition contained to be true in such manner and form as the same are therein set forth and alleged, doth demur in law to the said Petition, and for cause of demurrer, shows:

1. That the said Petitioners have not in and by their said Petition, made or stated such a case as doth or ought to entitle them or either of them to any such relief as is thereby sought and prayed for from or against the said Joseph S. Alemany, Archbishop &c. Respondent, or to any relief whatsoever.

2. That the Hon. the said District

414 ND
PAGE 71

Court has no jurisdiction of the subject matter of the said Petition:

Wherefore, and for divers other errors and imperfections appearing in said Petition, this Respondent prays judgment whether he shall be compelled to make any answer to said Petition or any of the matters and things therein contained, and prays hence to be dismissed with his reasonable costs in this behalf sustained.

Eugene Casserly
Atty for D. S. Alemany,
Resp't.

Before his Honor, the Judge of the U.S. Dist. Ct. &c.

In the Matter of the Petition of Clement Panaud & Andres Pico —

vs.

Joseph S. Alemany, Archb'p. &c.

Demurrer to Petition

Due service of copy admitted — May 16. '57 Holladay

Filed July 16. 1857, W. H. Chevers, Deputy.

414 ND
PAGE 72

Eugene Casserly
Atty. for J. S. Alemany Resp't.

414 ND
PAGE 73

118

U. S. Dist. Court
D. C. 411
L. C. 751
Oct. 2nd. 18

Clement Rouaud
vs
The United States — Oct. 2nd. 18
"Garden of San Cayetano"

The claim in this case is fo
the orchard of San Cayetano
and some adjoining land f
merly within the Mission o
San José

~~The cause was submitted on~~
~~the~~ ~~of~~ ~~1859 with~~
~~briefs to be filed~~ —
~~No brief on the part of the U.~~
~~has been received~~ —

The evidence offered in suppo
of the claim is as follows
1. A petition signed by Ju
B. Alvarado and addre
to Pio Pico dated March
1845 —

In this petition Alvarado st
that he is desirous of establish
ing a house within the limi
of the Mission of San José
where there are already some

414 ND
PAGE 74

individuals residing by permission of the Governor's predecessors who have also received grants of lots according to their petitions –

He therefore asks for "100 varas
" of land in the vicinity of
" the main building and in-
" cluding an orchard of trees
" and a vineyard which is
" contiguous to said lot but
" separate from the principal
" one of the Mission as this
" property is almost completely
" abandoned offering neither help
" to indemnify or satisfy the
" natives or the Government for the
" value of said plants, as has been
" done ~~when the~~ by other persons
" when the Government has granted
" them vacant houses at the
" Mission of Santa Clara and
" other places on account of them
" being in the condition which
" I have stated – for which
" purpose and in order to avoid

414 ND
PAGE 75

3 3

delays &c I suggest to your
" Excellency if you should think
" fit to take the information
" which you may think necessary
" from persons who are actually
" in this city (Los Angeles) who
" are persons living in that neigh
" borhood in relation to
" what I solicit &c

2 The marginal decree of
Gov. Pico on this petition
dated March 13. 1845=
In this ~~pa~~ decree the Gover
nor states, that "being convinced
" that it is for the prosperity of
" the Department that the lands
" of the Missions should pass
" into ~~priva~~ the hands of industri
" ous individuals who may im
" prove them and also taking
" into consideration the decaying
" condition of the Indians I
" decree and order that the ses
" pective Judge put the Señor
" Colonel of the one hundred
" varas of land orchard and vine=

414 ND
PAGE 76

4 4

"which he solicits - that the act
"of possession being concluded
"the same Judge shall send
"to this Government a minute re
"port stating the actual con
"dition of the orchard and vine
"yard which have been granted
"as also the present petition
"and decree in order that
"in view thereof the Government
"may know what sum of
"money Señor Alvarado will
"have to pay over to the com
"munity of the mission of San
"José for the same and that
"the title be issued"

3 The report of the Alcalde of San José Antonio Mª Rico in compliance with the foregoing decree dated August 27. 1845

In this report the alcalde states that in obedience to the decree ~~to~~ he had given the possession therein mentioned to the Señor Colonel of Milicia Juan B. Al

414 ND
PAGE 77

apresented by his agent — of which act of possession he had given ~~him~~ a "testimonio" or certified copy to the interested party. The Alcalde thenpow proceeds to give a minute account of the condition of the orchard vineyard &c stating the number of useful trees vines &c

4 A petition by Alvarado to the Governor dated March 1. 1845

In this petition Alvarado states that "having ~~through~~ by the
" determination of the Government
" obtained the favor of putting at
" his disposition the orchard
" called San Cayetano ~~which~~
" of the ~~appurtenances~~ property. (de
" las pertinencia) of the Mission
" I am now in possession of
" the same and in order to
" be considered owner in full
" property thereof it is necessary
" that the Government should
" issue to me the corresponding

414 ND
PAGE 78

" tille ~~for which~~ I pray your
" Excellency that you be pleased
" to decree accordingly for which
" purpose I annex hereto the
" documents which are the evi
" dence of the concession and
" possession of the same —
" representing to you likewise
" ~~that~~ in order that your Excell
" ency may act with justice
" that on account of the ruinous
" condition of the property it
" will not produce to your peti
" tioner for some years even
" enough to remunerate him
" for the expense of repairs for
" which reason I offer in pay
" ment therefor either to the
" Indians or to the Government
" the number of 200 head of
" breed cattle
Wherefore I pray &c

The signatures to the foregoing
documents are testified to as genuine

414 ND
PAGE 79

8 7

They are all found among the archives — and so far as I am informed there is no reason to suspect their authenticity

The claimant has also produced from his own custody the carta de testimonio of the act of possession given to him by the Alcalde —

The genuineness of this document is sworn to by the Alcalde and the agent, Alvarado, to whom the possession was given ~~also~~ as stated by the Alcalde in his report is also produced and confirms the report in that particular

414 ND
PAGE 80

~~the report in that particular.~~

The claimant also produces the final title ~~issued at~~ dated May 25. 1846 & alleged ~~in pursuance~~ to have been issued as prayed for in Alvarado's petition of March 1846 – except that in pursuance of an arrangement between him & Andrés Pico the title is ~~issued~~ in favor of both jointly —

It is also testified by Alvarado that the title was issued to him & Andrés Pico and that the latter paid to the Government 500 head of cattle or thereabouts –

It will be observed that the only evidence that the grant was issued consists of the production of the instrument itself

The book in which it is said to be noted is not found in the archives

414 ND
PAGE 80-A

9

Neither Pico who is alleged to have made the grant nor Moreno who signed it as Secretary have been examined as witnesses

The only evidence in support of it is the usual proof ~~Depositions~~ that the signatures are genuine

How it came to be issued to Andrés Pico & Alvarado jointly and not to Alvarado alone is not explained except that Alvarado states he had ~~some~~ an arrangement with the brother of the Governor ~~In the~~ But it is not a little singular that both of these alleged grantees should ~~have~~ in another case and under another grant have pretended to be owners not merely of the orchard but of the whole Mission of San José and its appurtenances—

The grant produced in that

414 ND
PAGE 81

10

case was dated May 5. 1846
20 days previously to the grant
now relied on. It purported
to sell ~~the~~ to the grantees in this case Alvarado &
Andrés Pico, the ~~whole~~ Mission
of San José and its appurtenances.
If the genuineness of that grant
were established it would be
almost conclusive proof that
the same parties could not
have applied for and obtained
twenty days after its execution,
another grant of part of the
very land already granted to
them, and have paid an
additional consideration of
2 or 300 ~~horses~~ cattle for the ~~and~~
additional title paper
~~But~~ That grant, however, was rejected
by the Court as spurious—
But the fact remains that
the same parties have in
another case ~~set~~ up a different title
to ~~this~~ property claimed in
this; and as ~~it is clear that~~

414 ND
PAGE 82
P

13 11

One of the grants ~~to all~~ is naturally suggested ~~Prima facie~~ suspicious ~~the~~ ~~it is most probable~~ that the other is of the same character.

~~There are also some intrinsic~~ The documents themselves are also in some degree suspicious. If on the petition of Alvarado the governor determined to accede to it, it is singular and a departure from an almost uniform practice, that the Governor did not on the margin of the petition make some order or decree indicating the dispositions he intended to make in the premises.

But the petition contains no such marginal order.

In the case of Sarcin vs the U.S it was held by this Court that under the decree of 1840 and the positive instructions contained in the original letter signed "Monterdioca" the Governor had no authority to grant the cultivated and improved property belonging to the Mission Establish

414 ND
PAGE 83

ments— The
By the decrees of the Departmental Assembly of May 28. 1845 and March 30 1846 the Governor was authorised to lease certain of the missions and if that ~~was~~ were found to be impracticable to sell them to the highest bidder—
On the 15th April 1846 the letter of Monterdioca instructing the Governor to suspend all further proceedings relative to the alienation of the missions was communicated by the Governor himself to the Assembly—
It is ~~not~~ not only highly improbable that the Governor should have within a few weeks thereafter, proceeded to do the very thing he was prohibited from doing, but ~~it~~ as already decided by this Court it is clear that he had no power to do it—
When we consider the nature of this claim, the absence of any evidence that from the decrees that the grant extend

15 13

the ~~absence~~ fact that the usual margin at note is not found on Alvarado's petition. The introduction of the brother of the Governor as a grantee — the facility with which the title could be manufactured and ante-dated — ~~and~~ the fact that another title issued by the same Governor in favor of the same parties, and ~~for the same land~~ including the same land, has already been found spurious, ~~it is not easy to resist the conclusion~~ and that the pretended action of the Governor was in direct violation of a positive order recently received by him, it is difficult to avoid the conclusion that both grants have a common origin & a similar character —

414 ND
PAGE 85

14

It is contended that the
~~origin~~ marginal order of the
Governor upon Alvarado's petition
the possession given to him in
pursuance thereof, and his sub
sequent occupation of the land
constitute an equitable title which
the U. S must respect —
At the time of the ~~an~~ acquisition
of California by the U. S, the work
of secularising the Missions which
had been begun under the decree
of 1833 was by no means completed.
The attempt of Figueroa and his
successors to secure to the Indians
some part of the ~~lan~~ cultivated land
which their labors had improved
had signally failed — Each suc
cessive regulation having for its
object to secure the faithful
administration of the Missions
and stewards in whose hands
they had been placed seems
to have been without avail —
and the Governors continued to
grant the lands belonging to
those establishment with but
slight regard for the rights of

414 ND
PAGE 86

~~17~~ 15

indigenous inhabitants by whose labor they had been built and among whom it was originally intended to distribute such lands as they might require when the ~~Rio~~ Missions ~~were~~ should be converted into Pueblos — But these extensive spoliations to which these once flourishing establishments were subjected did not merely deprive the Indians of the asylum and the means of support created by ~~his~~ their labor and promised to ~~them~~ them when first reclaimed from savage life ~~but~~ the ~~than restoring to them~~ secure by the administrators of the orchards vineyards &c and some of the Mission buildings left the Padres and the secular clergy by whom they were to be replaced, destitute of the means of support —

The Bishop of the California therefore addressed a memorial to the Government in which the disastrous effect upon the Church of the policy which had been pursued was set forth — and the Government recognising

414 ND
PAGE 87

the spirit of these representations ~~of 1848~~ on the 9th November 1848" in conformity with every thing the "Reverend Bishop of the California had petitioned in "his communication and "in conformity with the "decree of the 7th November "1835 which ordered the "Missions to be restored to "their former condition" — and it ~~for~~ announced its intention to issue "a general or "decree to the Governor of the "Californias for the restoration of the missionary property, without delay or impediment of the possessions "and property used by them "under this administration for "the conversion of the heathen" Among the earliest acts of Micheltorena was the issuing of a Proclamation or decree that various missions among which was that of San José should be delivered up or restored to the Most Rev

414 ND
PAGE 88

Fathers who were to continue to govern them and take charge of the natives as before —

It is unnecessary to recapitulate the various decrees passed by the ~~Assem~~ Departmental Assembly ~~who~~ authorising the sale, & the renting of ~~various~~ the missions —

I have been unable to discover from what source they derived any authority to empower the Governor to deal with this portion of the public property. It is to be observed however that both the renting and sales were required to be made at public auction — and ~~the~~ in the distribution of the proceeds, the claims of the Church and the rights of the Indians were here for at last, respected —

For the ~~[illegible]~~ conservation of divine worship and the maintenance of the Indians 2/3ds of the proceeds of the rents were

414 ND
PAGE 89

~~22~~ 18

by the decree of May 28th 1845 to be devoted —

By that decree of 28th Oct 1845 the surplus of the proceeds of the sales therein authorised after paying the debts of the missions were "to be placed "at the disposal of the respec "tive Prelate for the maintenance of Religious worship" — and a disposition of the rents was made similar to that contained in the decree of May 28th preceding —

By the decree of March 30. 1846 the surplus of the purchase moneys was required to be distributed equitably amongst the Indians —

The action of Pio Pico therefore in attempting to sell at private sale, to his brother and others not merely the lands but the ~~orchards~~ houses and orchards made by the missionaries and their neophytes, ~~and~~ "contiguous to and in immediate communication with "the Churches", and which the

414 ND
PAGE 90

Supreme Government had decreed "should remain to the "use and benefit of the Missi "onaries in accordance with the petition of the Bishop, was not only in violation of that decree but unauthorized by the decrees of the Departmental assembly now which he pretended to derive his authority

That the Supreme Government so regarded it is evident from the order signed "Monterey dicea" which peremptorily directs the Governor to suspend all proceedings respecting the alienation of the Mission property

That the Departmental assembly so regarded it is evident from their decree of October 31 1846 the 1st Article of which provides that "the sales "of Missions made by Don Pio "Pico as Governor as well as "all other acts done by him "on the same subject beyond

414 ND
PAGE 91

his authority are hereby
entirely annulled".
This decree tho' passed after
the taking of Monterey and
what has been deemed the date
of the conquest of the country
is nowhere of important as
a practical construction of
the validity of the Governors acts
by the very body from which he
professed to derive his powers.

It from the foregoing it results
that ~~the objection to~~ the alleged
inchoate or equitable title which
it claimed was conferred by
the marginal decree of Pio
Pico ~~is as equally strong with~~
can have no greater validity
than the final title ~~which is in~~
~~in this, and the other claim~~
~~for the same mission~~, which
it is alleged issued after the reception of
the Montevideo document.
Neither the marginal decree
nor the final title in this case
could have been issued
in virtue of the authority con
ferred by the colonization laws

414 ND
PAGE 92

laws of 1824 or the regulations of 1828 — Alvarado had already received from the Government all the land which could by those laws have been granted to any individual — The ~~consideration~~ past therefor of occupation and settlement can add nothing to his equities — as might be the case if the grant had been a colonization grant for which occupation and settlement furnished the only consideration —
The transaction proposed was to all intents a sale and the only circumstance which could ~~add~~ strengthen to the equitable rights of the claimant would be the payment of the price —
But on this ~~the~~ point the evidence is insufficient —
No receipt ~~of sale~~ for any sum or any number of cattle is produced — The only evidence on the subject is the statement by Alvarado that Andrés Pico ~~had paid to~~ gave to the Government 300 head of cattle or thereabouts — But the petition

414 ND
PAGE 93

24 of Alvarado offers and the grant accepts 200 head of cattle ~~of~~ as the compensation to be paid for the land - The recollection of Alvarado is thus at fault as to the ~~quantity~~ number of the cattle - and when it is considered that in the former case for the mission of San Jose the same parties now alleged to have paid $12000, for lands, within which the land now claimed is embraced it is difficult to attach much credit to the bare statement of Alvarado ~~entirely uncorroborated and probably false~~ that a payment was made in this case -

That Alvarado did not himself consider the order directing the possession to be given to him, as amounting to a title is expressly stated in his ~~the~~ subsequent petition - "In order to be considered the owner in full property of the land it is necessary that the government should issue

414 ND
PAGE 94

to me the corresponding title.
That title I think it is not satisfactorily shown that he was obtained. Nor do I consider the evidence of the ~~payment~~ payment of the price ~~sufficiently~~ clear enough nor the fact of his having occupied an ancient orchard & vineyard of the mission, sufficient to create any equitable title which the U. S., who have already recognized on the claim of the Roman Catholic Bishop the right of the church to the lands now claimed, are bound to respect —

On both grounds therefore I think the claim should be rejected.

1 Because the Governor had no power to ~~create~~ confirm an incho ate, title, or to make a final grant of the land —

And 2dly

Because if such power technically existed it was in this case exercised in violation of the policy of the ~~Government~~ Supreme

414 ND
PAGE 95

Government, the claims of the Church and the rights of the Neophytes - as well as in utter disregard of the directions of the Departmental Assembly - that and in the absence of satisfactory proof of the bonâ fide payment by the grantees of a reasonable equivalent for the concession there can be no equitable obligation upon ~~the part of~~ the U. S. to complete the ~~title~~ grant by giving to the claimants the "title in full property."

No. 414

U. S. District Court.

The United States.
ads.
Clement Pomaud, et al.

Opinion of the Court.

Filed October 2nd. 1860.
W. W. Chevers.
Clerk.

Samuel W. Holladay,
Counsel for Claimants.

5

414 ND
PAGE 96

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

Samuel Parnell & others, Libs.
v.
The United States

No 414

414 ND
PAGE 97

Now come the above named claimants by S. W. Holladay their counsel & move the Court to open the decree & grant a rehearing herein & that the cause stand continued till the next term of this Court for that purpose

Nov 27, 1862

S. W. Holladay
Atty for claimants

Nov 27, 1862.
Objection to the non production & filing of affidavits at this term in support of the above motion waived — they to be filed next term

Calhoun Benham U. S. Atty

No. 414.

N. L. Dist. Court.

The United States.

vs

C. Prieaud. et al.

Motion for re-hearing.

Filed Nov. 27, 1860.
W. A. Cheves,
Clerk

Filed Nov 27/60.

414 ND
PAGE 98

414 ND
PAGE 99

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 ~~Wed~~ Tuesday the 27th day of November in the year of our Lord one thousand eight hundred and ~~fifty~~ sixty

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States
v.
C. Durand, et al } No. 414

And now at this day, on motion of S. N. Holladay Esq, atty for claimants, the U. S. atty being present and consenting thereto, It is Ordered, that the claimants herein have leave to docket their motion for a rehearing of this cause, in which a decision was rendered during the present term in favor of the United States, and that in the mean time all proceedings herein be stayed, pending a proper showing on the part of said claimants in support of their said motion, which showing is hereby allowed to be made during the December 1860, Term of this Court.

Ogden Hoffman
Dist Judge

No. 414.

UNITED STATES DISTRICT COURT,

Northern District of California.

C. Pinard, et al,

vs.

The United States.

Motion to docket motion for re-hearing.

Filed November 27, 1860,

W. H. Chevers,

CLERK.

By 7

DEPUTY.

414 ND

PAGE 100

Towne & Bacon, Printers, 125 Clay Street, corner Sansome.

414 ND
PAGE 101

At a Stated Term of the DISTRICT COURT OF THE UNITED STATES OF AMERICA, for the Northern District of California, held at the Court Room, in the City of SAN FRANCISCO, on Thursday the Tenth day of April in the year of our Lord one thousand eight hundred and ~~fifty~~ sixty two

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States
v
Clement Panaud et al } No. 414.

It appearing to the Court that the claim of the above named claimants was rejected October 2. 1860, and that on November 27th, 1860, an order was entered staying further proceedings pending a motion in behalf of claimants for a rehearing, a proper showing in support whereof was allowed to be made during the December Term, 1860; and it further appearing that said Term has expired without such showing, Now Therefore, on application of W. H. Sharp Esq, U. S. Attorney, It is Ordered, that the said motion be and the same hereby is denied, and that a decree rejecting said claim be entered.

Ogden Hoffman
Dist Judge

414

UNITED STATES DISTRICT COURT,

Northern District of California.

The United States

vs.

C. Parrand et al

Order denying motion for rehearing.

Filed April 10th 1862,

W. H. Chevers

CLERK.

~~By~~

~~DEPUTY.~~

414 ND
PAGE 102

Towne & Bacon, Printers, 125 Clay Street, corner Sansome.

414 ND
PAGE 103

At a Stated Term of the DISTRICT COURT OF THE UNITED STATES OF AMERICA, for the Northern District of California, held at the Court Room, in the City of SAN FRANCISCO, on Thursday the tenth day of April in the year of our Lord one thousand eight hundred and ~~fifty~~ sixty two

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States
v.
Clement Panaud et al

No. 414. L.C. 751

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 on the 3d of March, 1851, upon the transcript of the proceedings and decision of the said Board of Commissioners, and the papers and evidence on which said decision was founded, and upon the further evidence taken by order of the Court; and it appearing to the Court that the said transcript has been filed according to law, and counsel for the respective parties having been heard, It is Ordered, adjudged and decreed that the said decision be and the same hereby is in all things affirmed; And it is further Ordered, adjudged and decreed that the claim of the said Claimants is invalid, that the said claim be and hereby is rejected, and that their petition for a confirmation be dismissed.

Ogden Hoffman
U. S. Dist Judge

414

UNITED STATES DISTRICT COURT,

Northern District of California.

The United States

vs.

Clement Panaud et al

Decree rejecting claim.

Filed April 10th 1862,

W. H. Chever

CLERK.

By

DEPUTY.

414 ND

PAGE 104

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414 ND
PAGE 105

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 Seventh day of September in the year of our Lord one thousand eight hundred and sixty-three.

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States.
v.
Clement Rivaud, et al.

No. 414.

In this case on application of S. W. Holladay, Esq. Counsel for Claimants, made in open Court, it is ordered by the Court that an appeal in behalf of the Claimants, from the final decision of this Court rendered in said cause at the December term, 1862 be, and the same is hereby granted, and that a certified transcript of the pleadings, evidence, depositions, and proceedings in the said cause be sent to the Supreme Court of the United States without delay.

No. 414.

UNITED STATES DISTRICT COURT

Northern District of California.

The United States,

v.

Clement Lanard et al.

Order granting appeal in behalf of Claimant.

Filed September 7. 1863.

W. H. Chevers,

Clerk.

414 ND
PAGE 106

U. S. District Court.

The United States
v.
Clement Pavaud, et al.

} No. 414.

414 ND
PAGE 107

This case was rejected by the Board of Land Commissioners, from whose decree the claimants have appealed to this Court.

With the copy expediente produced from the archives, is produced from the custody of the claimants a grant dated May 25. 1846, purporting to be signed by Pio Pico as Governor, and attested by José Matias Moreno, as Secretary. Moreno also certifies at the foot of the grant that record "is taken in the proper book".

Upon this grant the claim must mainly rest, for without it the only document of title is the ~~concession~~ decree of Pio Pico, dated Mch 12. 1845, and which is found in the expediente. This will be considered hereafter.

414 ND
PAGE 108

The grant has not been duly proved. It was produced by the claimants and stands unsupported by any evidence of its genuineness. It is annexed to the deposition of Antonio Maria Pico, who swears that the signatures to it are genuine, and states his means of knowledge to be that he has often seen Pico and Moreno write. But he does not prove when.

That the signatures to the grant are genuine is admitted; but that the grant was signed and attested at the date it purports to be, is not; and we have a right to demand the obvious proof required, viz. the production of the book from the archives in which it was noted, or the loss of that record accounted for; and also the testimony of Moreno who attested it as Secretary, and Pico who signed it as Governor — both of whom have been in San Francisco within the last two years, and who were examined in other cases. No effort however was made by the claimants to procure their testimony.

414 ND
PAGE 109

Had they or either of them been produced by the claimants the real reason why Andres Pico was included in the grant might have been elicited. As his name does not appear in any of the papers forming the expediente, and as ~~his~~ Alvarado's second petition was made only 55 days before the grant purports to have been issued, and which second petition was made at Monterey while the grant purports to have been made at Los Angeles, the reason assigned by Alvarado in his deposition seems entirely insufficient; while the appearance of Andres Pico's name in the grant, if it was ante-dated, is easily accounted for. He was the brother of the Governor, and a half interest was a reasonable commission for obtaining the signature, considering the amount of his business in that way. ~~which has been~~ Moreno's price was smaller for such transactions, and his price was not contingent, consequently we have no record of it.

414 ND
PAGE 110

The grant ~~therefore~~ must be considered as a document which, being produced from the custody of the claimants, carries no presumptions in its favor, and must be supported by the necessary proof, and this proof not having been adduced by the claimant, ~~the~~ it must therefore be disregarded in the consideration of the case.

Assuming then that the grant vests no title, what remains upon which to base a confirmation of the claim presented?

Nothing, but what is contained in the espediente — which will now be considered:

The last paper in that record is the 2d. petition of Alvarado, dated at Monterey March 1. 1846, in which he says "the orchard of San Cayetano is of the property of the Mission of San Jose" — and yet the same Juan B. Alvarado in another case, and in conjunction with the same Andres Pico, presented a grant to the Land Commission for confirmation, made

414 ND
PAGE 111

by the same Pio Pico, and attested by the same José Matias Moreno, for the whole of the establishment or mission of San José, and dated the 5th May, 1846; and in this case produces a grant for part of the same property on the 25th May, 1846, or twenty days later!

This second petition does not prove any title in itself, nor does it throw any light upon the grant which is claimed to have been afterwards issued upon it; but it does show Alvarado's own estimation of the papers in the expediente which precedes it. Alvarado had been governor - knew the working and effect of the colonization law of 1824 and the regulations of 1828, and is consequently a good witness as to the sufficiency of the papers in the expediente of a prior date. He says - "I am now in possession "of the same, but as in order to be "considered as the owner in full "property of the same it is necessary "that the government should issue

to me the corresponding title" &c.

Now, if under the former government Alvarado considered the paper title necessary to vest, how readily would this occur to him on the change of government; and does not this suggest another motive to procure an ante-dated grant, and to procure which it was necessary to have half of it in the name of Andres Pico.

414 ND
PAGE 112

The next preceding document is the report of Antonio Maria Pico as to the condition of the orchard, & which is of the same date as the testimonio of possession.—Aug 27. 1845

Next is the decree upon the first petition of Alvarado. This decree on its face is simply an order to the proper Judge to put Alvarado in possession of the property pending further proceedings. The possession was given and a report made on August 27. 1845. The decree was made March 12 1845, and the first petition March 11. 1845.

414 ND
PAGE 113

This decree cannot supply the place of a grant by laying the foundation of an equity to be protected under the treaty, for the petition was not made for a grant under the colonization law, but under the policy which Pio Pico had commenced to pursue with respect to the Mission property. No equity can be set up from this decree and the subsequent possession under it, for ~~each of the~~ Alvarado had already been granted his maximum under the colonization law; and until the sale was consummated no title could pass. A grant would afford the only evidence of that consummation, and the grant produced fails for want of proof.

But, giving the ~~con~~ decree all the force of a concession in colonization, considered as a sale, yet it confers no title for the reason that Pio Pico had no power to thus alienate the Mission property. — see pointed brief

and Exhibits in the Mipiim cases, and the opinion of this Court in The U. S. v. Andres Rico, et al. — The Montevideo document, dated Nov 14, 1845, and received by the Departmental assembly on the 15th April 1846 (before the date of the grant in this case) effectually destroyed any right supposed to have been conveyed by the decree — and this is another evidence that the grant was not made at the time it purports to have been.

414 ND
PAGE 114

If the decree of March 12, 1845 conveyed no rights to the claimants which the U. S. are bound to respect under the treaty, then the possession given (which ~~it~~ is not disputed ~~was given~~) under and by the force of that decree could not convey any such right.

It seems clear, that the record from the archives, and the fully proved testimonio of possession, do not, without the aid of the ~~gi~~ grant, constitute ~~an valid title~~

414 ND
PAGE 115

equity; for that would not be even with the grant admitted, because Pio Pico had no power to make it, founded on a sale of Mission property. But the grant itself is not duly proved, and can afford not even the questionable support which it might have given were the Court satisfied it was executed when it purports to be, and in the due course of official business, though under a mistaken power.

It is submitted that the claim must be rejected.

San Francisco, Sept 1860.

Jno. B Williams

The attention of the Court is also called to the fact that the orchard claimed in this case has been confirmed to Jos S. Alemany, Bishop &c. — See Decree in Mission Exhibits, pp 132-3.

414

U. S. District Court.

The United States

v.

C. Panaud, et al

Brief for U. S.

414 ND
PAGE 116

Jno B Williams