CASE NO.

1

NORTHERN DISTRICT

LAS MARIPOSAS GRANT

JOHN CHARLES FREMONT

CLAIMANT

LAND CASE: 1 ND pgs. 307

FEB 22 1963

JUL 17 1963

ALSO AVAILABLE ON MICROFILM

No 1 - ND

A

CASE NO. 1 ND

PAGE NO. 1

Transcript of the Proceedings in Case No. 1.

Las Mariposas,

John Charles Frémont, claim't,

vs

The United States, defendant.

E NO. 1 ND.

SHEET NO.

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 Wednesday, the twenty first day of January, Anno Domini, One thousand, eight hundred and fifty two, before the Commissioners to ascertain and settle the private Land Claims in the State of California, sitting as a Board, in the City of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The Petition of John C. Frémont, for a tract of land called "Las Mariposas," was presented and ordered to be filed and docketed, No. 1, and is as follows, to wit:

No. 1. John C. Frémont, claimant,

vs.

The United States, defendant.

To the Hon. the Commissioners of the United States to ascertain and settle private

Land Claims in the State of California.

Your Petitioner, John Charles Fremont, a citizen of the United States, respectfully claims, and asks that he may have confirmed therein, a tract of land in the State of California, and County of Mariposas, supposed to contain ten Spanish leagues in extent, situated on the East of the River San Joaquin, and being a tract of country called Las Mariposas, a valley watered by a stream, then and still known under the name of Las Mariposas, forming the line of road for the troops employed in that region against the Indians in their journies from the San Joaquin to the Snowy Mountains between which this tract lay, affording many convenient camps with grass, wood, and water, the same being represented as well as may be in the accompanying map, drawn according to the original decree vesting said land in Juan Bautista Alvarado, and also as described in an after paper or title, and of which said tract of land your petitioner and claimant says the title was derived from the Mexican Government, and of which he is at present the legal owner

Your Petitioner represents that on the 29th day of February, 1844, the said land was by a decree made by Governor Manuel Micheltorena declared to be the property of Juan B. Alvarado, a copy of which decree marked Exhibit A, is hereunto annexed, and will on final hearing be proven as shall be required.— Your petitioner further states

3

that said decree being founded on valuable consideration said Micheltorena further to manifest the justice of the Mexican Nation and more fully to secure the said Juan B. Alvarado in his said claim, issued a further and additional muniment of title on the said 29th day of February, 1844, a copy of which is hereunto attached, marked Exhibit B, the original of which shall be produced and proven as shall be required.

At the time this grant was made the country in which it lies was a remote frontier, occupied exclusively by hostile Indians, and considered too dangerous for occupation until nearly the present day. Along the stream of the Mariposas was the customary camping ground of the Mexican troops employed against the Indians in that region, and thus became familiarly known. In the year 1843, Alvarado then Governor of California directed Don Santiago Estrada, the officer commanding the Departmental troops employed in the valley of the San Joaquin to indicate to him such place in the valley as from his intimate knowledge of the localities he considered best suited for the establishment of a rancho. That officer in reply recommended him to select the Mariposas; he informed him that in pursuit of the Indians he had passed up the valley of the stream, and beyond it to the foot of the Sierra Nevada (Snowy Mountains;) That he had found it to contain very many small and beautiful valleys, having—

CASE NO 1 ND
PAGE NO. 5

permanent streams affording water all the year, and that the whole face of the country was covered with nutritious grasses, and well wooded with varieties of timber: that on these accounts it was eminently adapted for a rancho, and he accordingly recommended it as the best he knew. Upon this representation Alvarado applied for the place shortly after the arival in this country of Don Manuel Micheltorena, Governor and Commanding General of the two Californias. In his application he informed the Governor that by reason of the hostility of the Indians he could not then make such an examination of the country as would enable him to lay before him a survey of the land for which he asked, but that he would do so, at some future time, when the condition of the country permitted.

Agreeably to the customary forms of law this petition was referred by the Governor to the judicial authorities of the District, for information as to whether the land asked for was vacant and whether there existed any impediment in the way of making the grant. A favorable reply having been returned Micheltorena issued a decree declaring Alvarado owner of the land lying between the Sierra Nevada, and the rivers Chanchillas, Mercedes, and San Joaquin; and an additional title declaring that Alvarado had by his patriotic services made the Government his debtor, and making this grant of land the consideration

5.

CASE NO. 1 ND
PAGE NO. 6

for his public services was issued in the customary form. The Mariposas and Chanchiles Indians at that time were, and nearly to the present day have continued to be among the most warlike in California, and no settlement could be made by Alvarado. In 1844, the year of the grant also commenced the civil war which in the following year ended in the expulsion of Micheltorena and the Mexican troops from California. These troubles rendered it impracticable to spare the troops necessary to survey the land and give juridical possession. In February 1845, the land was conveyed to the present claimant, by whom an attempt was made in that year to occupy, but which his forced absence under military orders rendered abortive. A similar attempt in 1849 to occupy for agricultural purposes was defeated by the hostility of the Indians who in May of that year killed six out of forty men encamped on the place. The immediate country was the seat of the recent Indian war. A cattle farm now maintained there by the present claimant is constantly in danger of destruction and it is still difficult to find men willing to live there except collected together in considerable numbers.

The final grant was made on the 29th day of February, 1844, by the Commanding General and Governor of the Californias, Don Manuel Micheltorena, who was sent to California during the

CASE NO. 1 ND
PAGE NO. 7

dictatorship of Santa Anna, and under instructions which invested him with the same plenary and extraordinary powers in these departments, that Santa Anna himself posessed in Mexico. A certified copy of the original application by Alvarado to Micheltorena, of the reference by this officer to the Secretary of State, of the consequent reference to the Prefect of the district and of his reply, of Michettorena's decree declaring Alvarado owner of the land lying between the Sierra Nevada, the San Joaquin, the Merceder, and Chauchiles rivers, together with a copy of the original deed of transfer executed to John Charles Fremont on the 10th day of February 1847, are herewith laid before the commission, and are relied upon by your petitioner as the documentary evidence to establish his claim.— Within his knowledge there are no conflicting claims. The facts stated in this petition are of general notoriety, and can be sustained by the testimony of numerous witnesses for the obtaining of which your petitioner prays that all proper process and notices may be ordered. The accompanying map exhibits the natural boundaries mentioned in the petition and decree, and the tract within the red lines, containing about ten leagues in extent, shows what had long been commonly known as "Las Mariposas", and as such granted by the title in form of February 20th, 1844, and now claimed by your

7.

CASE NO. 1 ND

PAGE NO. 8

petitioner.

(Signed) John Charles Frémont.

San Francisco, Cal'a, Jan'y 21, 1852.

Filed January 21st, 1852.

(Signed) I. B. Can,

Sec'y.

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

Monday January 26, 1852.

In Case No. 1, John C. Frémont, the following motion was filed, viz:

In the matter of the claim of John C. Frémont to ten leagues of land called "Las Mariposas".

To the Hon. the United States Commissioners for adjudication of California Land Claims.

John C. Frémont who has filed his claim for ten leagues of land, called the Mariposas, granted by Governor Micheltorena to John B. Alvarado, and by the latter conveyed to said Frémont, respectfully represents that owing to the circumstances mentioned in his petition and accompanying documents, the said grant was never located by any actual survey; but that in the year 1849, a rough sketch or plan of the Ten Leagues covered by said grant was made, and afterwards filed in the Office of the Surveyor General for

CASE NO. 1 ND
PAGE NO. 9

California; and a copy thereof accompanies said petition. Said Frémont further represents, that the said sketch represents the lands asked for and granted to said Alvarado, and that the said Frémont took possession thereof accordingly in 1849, and has ever since continued to possess and occupy the same; but without any actual survey or marking of boundaries.— Said Frémont further represents that, (as shown by the official reports on which the grant to Alvarado was founded) all the lands within the limits mentioned in said grant were vacant at the time of the grant, and that, by the express terms of the decree and grant in favor of said Alvarado, as well as by the undoubted law and usage at that time prevailing in this country, the grantee had the absolute right to select and locate the quantity given by the title (in this case Ten leagues or Sitios,) in any part of the tract included in the limits described by the title; as is evident by the very terms of the title and can be fully and clearly proved by evidence of the law and usage referred to.— The said Frémont therefore prays your Honorable Board to make an order directing an initiatory survey under the superintendance of the United States Surveyor General of California to be made "of the land known by the name of Las Mariposas to the extent of ten sitios de ganado mayor, within the limits of the Sierra Nevada, and the

9.

CASE NO. 1 ND
PAGE NO. 10

Rivers called the Chauchiles, the Merced, and the San Joaquin", locating the said quantity of ten sitios according to the claim of said Frémont, and having reference to the said sketch or plan, but in such manner as to confine such location within the said limits, and to include in the survey, so to be made, the said quantity of Ten Sitios.

Jones, Tompkins & Strode
and R. A. Lockwood,
for Claimant.

Filed January 26, 1852,
W. B. Carr,
Secretary.

Wednesday January 28, 1852.

In case No. 1, John C. Frémont, motion filed by the Counsel for the Claimant sustained, and the following order of survey granted, to wit:

"For the purpose of determining with precision and certainty the limits and boundaries of the land claimed by John C. Frémont in his petition, No. 1, pending before the Commissioners, it is, on motion of the Counsel for the Claimant, Ordered, that an initiatory survey, under the superintendance of the United States Surveyor General of California be made" of the land known by the name of Las Mariposas, to the extent of ten sitios de ganado mayor, within the limits of the Sierra Nevada, and the rivers called

the Chauchilas, the Merced, and the San Joaquin", locating the said quantity of Ten Sitios according to the claim of said Fremont, and having reference to the sketch or plan annexed to his petition, but in such manner as to confine such location within the said limits and to include (in) the survey so to be made, the said quantity of ten sitios. But this order is not in any manner to determine as against the United States either the question of title, the construction of the grant, or the location, boundaries or extent of the land to which the claimant may be entitled.

Wednesday, August 11, 1852.

In case No.1, John C. Frémont, Juan B. Alvarado filed a release in his favor, executed by the claimant, rendering said Alvarado a competent witness in this case; which release is in the words and figures as follows, (vide page 95 of this Transcript.)

In the same case, the Deposition of Juan B. Alvarado, a witness in behalf of the claimant, taken before Commissioner James Wilson, with Exhibit marked A, annexed thereto, was filed, and is in the words and figures as follows, (vide page 97 of this Transcript.)

Saturday, August 14, 1852.

In Case No.1, John C. Frémont, the Deposition of Antonio Maria Pico, a witness in behalf of

11.

CASE NO. 1ND
PAGE NO. 12

the Claimant, taken before Commissioner James Wilson, was filed, and is in the words and figures as follows, (vide page 124, of this transcript.)

Monday, September 13, 1852.

In Case No.1, John C. Frémont, the Deposition of William Carey Jones, a witness in behalf of the Claimant, taken before Commissioner James Wilson, was filed, and is in the words and figures as follows, (vide page 135, of this Transcript.)

In the same Case, the Deposition of Geo. W. Wright, a witness in behalf of the claimant, taken before Commissioner James Wilson, was filed, and is in the words and figures as follows, (vide page 131, of this Transcript.)

Tuesday, September 14, 1852.

Case No.1, John C. Frémont, was called: The Counsel for the Claimant, Mr. Lockwood, read the Petition in this Case, with the Documentary Evidence; opened the argument, and case continued for further argument, until 10 o'clock, A.M., to morrow

Wednesday Sept'r 15, 1852.

Case No.1, John C. Frémont, called. Argument by Mr. Lockwood, one of the Counsel for the Claimant, resumed, and concluded, and on motion of the U. S. Law Agent, the Case continued until Saturday next, at 12 o'clk, M.

CASE NO. 1 ND
PAGE NO. 13

Friday, September 17, 1852.

In Case No. 1, John C. Frémont, the Counsel for the claimant filed an authenticated copy of a Spanish Document, on file in the Office of the Surveyor General of the U. S., for California, as evidence in behalf of the claimant; which authenticated copy, marked Exhibit E, and the translation thereof, are as follows, (vide page 92, of this Transcript.)

Saturday, September 18, 1852.

Case No. 1, John C. Frémont, called: The U. S. Law Agent commenced the argument in answer to the claimant's Counsel, and concluded. Case, with the Evidence, submitted, and taken under advisement by the Board.

Tuesday, September 28, 1852.

In Case No. 1, John C. Frémont, the parties litigant filed the following Agreement, to wit:

It is agreed between the claimant and the United States that the quantity of land embraced within the limits of the entire tract of land specified in the title from which the "ten sitios de ganado mayor" was to be taken, is more than one hundred square leagues. It is also agreed that the said Frémont was always a citizen of the United States, and never a citizen of the Republic of Mexico.

R. A. Lockwood
Att'y for Claimant.
Geo: W. Cooley,

13.

CASE NO. 1 ND
PAGE NO. 14

U. S. Law Agent.

Los Angeles, September 14th, 1852.

Monday, December 27, 1852.

In Case No. 1, John C. Frémont, Commissioner Hoiland Hoall delivered the opinion and the decree of finial confirmation of this Board.

Ordered, that the Opinion and the Decree of Finial confirmation of this Board, delivered this day, in this case, be recorded on the Journal.

Which Opinion and Decree are in the words and figures as follow, to wit:

No. 1. John C. Frémont, claimant.

Opinion by Commissioner
Hoiland Hoall.
(Delivered, December 27th, 1852.)

John C. Frémont has petitioned the Board of Commissioners to confirm to him a tract of land, consisting of ten square leagues, called Las Mariposas, situated in the County of Mariposa, in this State, to which he claims to have derived title under a grant from the Government of Mexico.

A preliminary survey of the land having, on application of the claimant, been ordered by the Board, and testimony taken, the case has been elaborately argued by the

CASE NO. 1 ND
PAGE NO. 15

counsel for the Petitioner, and by the Law Agent of the United States, and it has become our duty to pass upon the validity of the claim.

Before giving a particular statement of the facts of the case, and of the objections which have been made to the confirmation of the claim, it will be proper to dispose of some questions of a preliminary character, which have been discussed by the counsel, and which have a general bearing upon the duties and powers of the Board under the Act by which it was constituted.

It is insisted by the counsel for the petitioner that the powers of this Commission, under the Act of March 3, 1851, over the claims upon which they are authorized to act, are much more extensive than those conferred on the Supreme Court of the United States, by the Act of Congress of May 26, 1824; and for this superiority of power in the Commissioners the principal reason assigned is, that the powers with which this Board is clothed are of a <u>political</u> character, while those exercised by the Supreme Court are merely <u>judicial</u>.

We are not satisfied that there is such difference as is contended for between the character of the duties to be performed by the Supreme Court and this Board. A distinction is recognized, by the Supreme Court of the United States, between perfect and imperfect titles to land derived from the Government formerly possessing the

15.

CASE NO. 1 ND
PAGE NO. 16

territories ceded to the United States under the treaties of Louisiana and Florida. The doctrine of that Court is, that where the title had become complete and perfect in an individual prior to the cession, the Government of the United States acquired no interest in the land by the transfer of the territory. Such land, being completely and absolutely private property, would be protected in the hands of the owner, both by treaty and the law of nations. In such cases the title would need no confirmation, from the Government of the United States, and the owner no other protection than the enjoyment of the common rights of every citizen to appear and prosecute or defend his property before the ordinary judicial tribunals of the country. United States v. Wiggins, 14 Peters, 334; Choteau v. Eckhart, 2 How., 345 — 9 How., 445. But titles which were incomplete and imperfect at the time of the transfer of the territory, were held to stand on a different footing. Where some steps had been taken by the former Government towards the appropriation of land to the ownership of an individual, but there still remained other acts to be performed, in order to complete the grant, the fee was considered as having remained in such former Government, and to have been transferred by the treaty to that of the United States. The owner of such incipient title might have had a very strong claim on the justice of the former Government.

to complete and perfect it, and an obligation may have been devolved by treaty on that of the United States to recognize and confirm it; yet, as the legal estate, after the transfer of the territory, remained in the United States, the ordinary judicial tribunals of the country would have no authority to enforce it. If the obligation to complete the title had been that of an individual, a Court of Chancery might have been properly invoked by the claimant; but the Government not being suable in the Courts of Law or Equity, the party was necessarily compelled to resort to the legislative power of the country for relief. It has accordingly been uniformly held that a party having an incomplete title under the ceding Government, had no standing in Court; and that although his title might be founded on the plainest principles of equity, and protected by the treaty, that it was indispensable in order to make it available to him, that it should first be recognized and confirmed by the action of the political branch of the Government. Le Bois v. Brumell, 4 How., 449; Choteau v. Eckhart, 2 How., 375; United States v. Reyes, 9 How., 153; United States v. Bosidore, 11 How., 93. This confirmation under the Louisiana and Florida treaties was at first generally made by Congress itself, after ascertaining the facts of each case, by the reports of Boards of Commissioners appointed for that purpose,

17.

CASE NO. 1 N'D
FACE NO. 18

though in some instances authority was conferred on the Commissioners in certain clapes of claims and in regard to limited quantities of land, to pap finally on them, without the intervention of Congrep.

By the Act of Congrep of May 26th, 1824, authority was given to the District Court of Miapouri and the Superior Court of the Territory of Arkansas, in conformity with certain rules of decision, prescribed in the Act, to pap upon the validity of incomplete titles protected by the Louisiana Treaty, subject to an appeal to the Supreme Court of the United States. A similar authority was subsequently conferred on the Superior Courts in the Territory of Florida, in reference to the titles to land under the treaty of cession by Spain of that Territory, subject to a like appeal to the Supreme Court. And the Act of 1824 has more recently been extended to titles in the State of Louisiana.

It is obvious that the Supreme Court of the United States in papring upon these titles is not in the exercise of its ordinary judicial authority, but of a dilegated power which had previously belonged to the legislative branch of the Government. Such is the view taken by that Court, of the character of its authority. In the case of the United States v. D'Auterive (10 Howard's Reports, 624) which arose under the Act of 1824, as made applicable to Louisiana by the Act of 1844, and in which the claimant had prosecuted his title before the District Court of that State, Judge

CASE NO. 1 ND
PAGE NO. 19

cation says: "It has been repeatedly ruled by this Court that the control and recognition of claims like that now before us, were subjects belonging peculiarly to the political power of the Government: and that in the adjudication of those claims, the Courts of the United States expound and enforce the Ordinances of the political power." The authority of this Board under the Act of March 3, 1851, is precisely of the same character. The Commissioners under that Act are in the exercise of an authority delegated to them by the political power of the Government, and they exercise it only in virtue of such delegation. It is not a delegation of all political power, but of a power measured and limited by the terms of the Act. In this respect it corresponds with the powers conferred on the Supreme Court by the Act of 1824. The authority of both tribunals is derived solely from the several Acts of Congress conferring their respective powers, and the one can no more step beyond the boundaries of its powers than the other. Whether the authority which they exercise should, when delegated, be termed political or judicial, is probably, so far as their extent is concerned, of little importance. The authority is exercised by both tribunals, under judicial forms, and, like judicial power, in conformity to prescribed rules of decision. By whatever name the power exercised by this Board may be called, its extent must be measured and limited by the principles of adjudication laid down in the Act for its Government, and

we disclaim any authority whatever, under any pretence, to transcend those principles.

Without entering into a critical examination and comparison of the several rules and principles of decision which are laid down for the government of the Courts under the Act of 1824, and of this Commission by the Act under which it is constituted, it may, I think, be said that in general they are substantially the same. The Commissioners in deciding upon the validity of claims are to be governed by the treaty by which the territory where the land is situated was ceded to the United States, by the law of nations, by the laws, usages, and customs of the Government from which the claim is derived, and by the principles of Equity. All these principles, though not precisely in the same language, are laid down for the government of the Courts in the Act of 1824. The only other rule of decision found in the Act of 1851, is that which makes the decisions of the Supreme Court, so far as they are applicable, binding on the Commissioners. Under this rule the principles of decision by the Commissioners must of course correspond with those of that Court. It does not therefore, seem to be very apparent that the rules and principles upon which this Board are to act in the adjudication of titles, are more liberal than those prescribed in the Act of 1824.

In one particular the jurisdiction of this Board over the subjects on which

it may act is more extensive than that of the Courts under the Act before mentioned. Under that Act, the authority of the Court is confined to the determination of titles of a particular description, viz, to "grants, concessions, warrants, or orders of survey, legally made granted, or issued", and which under the former Government, "might have been perfected into a complete title". This would of course exclude any other form of title, if there be any, than those enumerated, as well as titles which had already been perfected. It has accordingly been held by the Supreme Court that its jurisdiction was limited to the consideration of the incomplete titles mentioned in the Act, and that it had no authority to pass upon titles which had become perfect. U. S. v. Reyes, 9 How., 1144; U. S. v. Philadelphia and New Orleans, 11 How., 609. In the Act constituting this Commission, no particular forms or clases of titles are mentioned, but the Board is authorized to decide upon, "any right or title derived from the Spanish or Mexican Governments", thus embracing within its jurisdiction every form and description of title, whether perfect or imperfect.

But if the general rules and principles of decision by which this Board is to be governed in their adjudication of claims should be found to be the same which were obligatory on the Court under the Act of 1824, it would not necessarily follow that the two tribunals, in their action upon

21.

titles executed in a similar manner should come to the same results. The laws, usages, and customs of the Government from which the claims are derived that are to be acted upon by this Board, are generally those of Mexico, while the laws usages and customs which were to be regarded by the Court under the Act before mentioned were those of France and Spain. In regard to claims which come before this Board derived from the Spanish Government, it cannot be taken for granted that the laws, usages, and customs under which they originated were the same that prevailed under the same Government in Louisiana and Florida. The treaties also which controlled the action of the Supreme Court under the before mentioned Act, and those in addition to it, were not the same that is made the rule of action for this Commission. In consequence of these important differences in the condition of the claims upon which the two tribunals are respectively required to pass, it might very well happen that titles which would be valid under the laws, usages, and customs governing our tribunal might be invalid under those controlling the decisions of the other. This difference between the laws and treaties on which the validity of California titles would depend, and those on which the decisions of the Supreme Court are required to rest, was perceived by the framers of the Act of March 3, 1851, and it was accordingly provided in

that Act, not that the decisions of the Supreme Court should form a universal rule for the action of this Board, but that the decisions of that Court should govern those of the Commissioners only "so far as they were applicable".

It would greatly lighten our labours, as well as relieve us from an immense responsibility, if we could find a guide for all our actions as Commissioners in the decisions of that justly venerated tribunal. But unfortunately for us, a great portion of the questions which we are required to pass upon, are such as have never been presented to that Court, and we must consequently form the best judgment on them in our power, without the aid of such desirable judicial authority. In the difficult and embarassing duty which we are called upon to perform, we derive no little consolation from the knowledge that the errors which we may commit in the adjudication of titles, are subject to the revision and correction of that highest judicial tribunal of the Government, for whose learning and integrity we, in common with the whole country, entertain the most unlimited confidence and respect.

There is one other question of much practical importance, of which it is deemed necessary to take some notice before proceeding to the examination of the facts of the present case. It relates to the manner in which this Board is to obtain

a knowledge of the character and extent of the rules and principles by which they are to be governed in deciding upon the validity of claims. There can be no doubt but that we may take judicial notice of the treaty with Mexico, of the law of nations, of the principles of equity, and of the decisions of the Supreme Court of the United States, and that we may seek for information in regard to them from the ordinary sources of such legal knowledge to be found in printed Books and authentic documents. But the laws, usages and customs of Spain and Mexico, from which the claims are derived, may be said to stand on a different footing, and to require to be proved before us as facts in each particular case, before we can be authorized to act upon them.

I think a strong objection to such a doctrine would be its impracticability. The laws of Mexico are those of old Spain, except where they have been changed by legislation; and it is a principle of both Spanish and Mexican jurisprudence, that an old law is not repealed by a new one, on the same subject, but is only superseded so far as the new law is repugnant to it. The consequence is, that in order to ascertain what the law of Mexico was at any given time, it would not only be necessary to consult the numerous volumes of its published statutes and decrees, but also frequently to resort, either directly or through approved digests to the numerous and extensive

codes of Spanish law which have been promulgated at different periods of the Monarchy.

The Act of March 3, 1851, requires that all the evidence taken to be used before the commissioners shall be recorded in books kept for that purpose. It seems obvious that if all the laws, decrees, and regulations upon which a proper adjudication of the validity of a title may depend, are to be proved as facts and made a matter of record in any individual case — as they must be, if we cannot take judicial notice of them — that the business of the commissioners, in the taking of testimony, in recording it, and in making copies of the record when necessary, would not only be enormously expensive to the Government and to claimants, but would soon become so unwieldy as to prevent the hope of its being continued to any practicable result.

It is undoubtedly a principle of English and American Law that Courts are not to take notice of the laws of a foreign nation, unless they are proved as facts. But I do not understand that this principle is now, or indeed ever has been applied to laws which formerly prevailed in any State or Territory of the Union, although such laws may at the time they were promulgated have been those of a foreign nation. On the contrary, I think it has always been the doctrine of the Supreme Court of the United States, that such laws were, within

25.

CASE NO. 1 ND

PAGE NO. 26

the Territory where they prevailed, to be judicially noticed by the Courts to the same extent that notice would be taken of the statute and common law of any of the old States of the Union.

The two first cases which came before the Supreme Court under the Act of 1824, were those of Soulard and Smith vs the United States. They were argued at the January term of the Court in 1830, and continued for advisement, in order that the Court might be furnished with additional information in regard to the laws of Spain applicable to the titles of the claimants. Judge Marshall in announcing the determination of the Court to continue the cases, concludes his remarks by saying — "We are far from being confident that the information is attainable; but have determined to hold the cases which have been argued under advisement until the next term, in the hope that in the mean time we may be relieved from the necessity of deciding conjecturally on interests of great importance", 4 Peters R., 512. Under the Act of 1824, all the evidence was to be presented to the District Court, and the Supreme Court exercising only an appellate jurisdiction, was not authorized to take testimony. If the Supreme Court had considered the laws of Spain which were applicable to the titles before it as foreign laws to be proved as facts, it would have been useless to continue the case for the production

of those laws. The Court in order to have been availed of such laws, must have remanded the cases to the Court below for the purpose of having testimony taken in regard to them, in order that it might be certified up and acted upon by the appellate tribunal. The fact that the Court continued the cases in order to look into those laws themselves, seems conclusive that they were of opinion they might take judicial notice of them. A reference to the numerous cases which have been decided by the Supreme Court under the Act of 1814, as well as to cases arising between individuals in which Spanish titles came in question, will show that it has never been the practice of that Court to require proof of the Spanish laws, but to take notice of them as of domestic laws, allowing them to be referred to by counsel, and read from printed Books as authorities; and they have been so quoted and acted upon by the Court in delivering their opinions.

It may be said that the case of the United States v/s Wiggins, 14 Peters R., 334, establishes the doctrine that the laws of the Government formerly exercising jurisdiction over territories subsequently acquired by the United States cannot be judicially noticed, but must be proved as facts. I do not understand the case as going that length. I think the doctrine of it is, that although the Court may take judicial notice of such of laws, the laws may also, especially when unwritten,

27.

CASE NO. 1" ND
PAGE NO. 28

be proved as facts.

In the District Court the claimants had been allowed to prove by witnesses the practice and rules in use in the offices of the Spanish Government in Florida, from which titles to land issued. The testimony was objected to by the Attorney General, on the ground that the practice, if it existed, must be a settled rule in the judicial tribunals, and should be shown by their decisions, and not by evidence of an inferior character. The Court disposes of the question with great brevity, saying, in substance, that foreign laws, and especially when unwritten, were to be proved as facts, and that Florida having been foreign to this country in 1815, when the transaction took place, the evidence might be admitted. No intimation is given in the opinion of the Court, that the former laws of Florida must necessarily be proved as facts, and were not proper subjects for the judicial knowledge of the Court. That the Court did not intend to be understood as so deciding, seems evident from the fact that Judge Catron in a subsequent part of the same opinion, speaks of the translated collection of Spanish Ordinances and Decrees, made by Mr. White, the first edition at the request of the Attorney General, and a second enlarged edition, then recently published by him on his own suggestion; from which latter edition the learned Judge proceeds to quote the Spanish ordinances

CASE NO. 1 ND
PAGE NO. 29

and decrees applicable to the title of Mrs. Wiggins, the claimant, and upon such ordinances and decrees, thus judicially noticed, to found the decision of the case.

But if the case of the United States v. Wiggins could be considered as casting doubt upon the authority of the Court to take judicial notice of the laws, usages and customs formerly prevailing in territories acquired by the United States from foreign Governments, that doubt would seem to be wholly removed by the judgment of the Supreme Court, in the case of the United States v. Turner, 11 Howard's Reports, 668. In that case a motion had been made by the claimant in the Court below for an issue to be tried by the jury, whether the grant in question was perfect and complete or not, by the laws of Spain in force in the Province of Louisiana, when it was made, which motion had been denied by the District Court. The motion was made and sought to be sustained on the ground that the laws of Louisiana prevailing at the time of the issuing of the title were to be treated as foreign laws, and consequently to be proved as facts. The question does not appear to have been made in the Supreme Court, whether it was the province of the Court or jury to pass upon foreign laws when proved, but only whether the laws in question were to be regarded as foreign laws or not. That was the only question discussed by the Court in regard to the propriety of ordering an issue,

29.

and the Court fully and directly decided it, holding and declaring that "the Spanish laws which formerly prevailed in Louisiana, and upon which the titles to land in that State depend, must be judicially noticed and expounded by the Court, like the laws affecting titles to property in any other State", and that they were not, in any sense, to be regarded as foreign laws to be proved as facts. This decision should, I think, be understood as merely affirming the correctness of the practice which had previously prevailed in the Supreme Court, and as not being inconsistent with the case of the United States v. Wiggins — which case merely permitted the use of parol testimony as an auxiliary aid to the Court in acquiring a knowledge of Spanish usages, founded on the difficulty of ascertaining such usages by a Court not supposed to be familiar with them.

In regard to the extent to which the laws usages and customs of Spain and Mexico formerly prevailing in California, and matters of history connected with them, may be judicially noticed, and the sources from which such judicial knowledge may be properly obtained, little need be said. The same rule must be applied to them that is applicable to subjects of judicial knowledge within any of the old States of the Union, where the common-law has prevailed. The matters which may in general be judicially noticed are stated with much care and accuracy by Mr. Greenleaf in his Treatise on Evidence,

sections 4, 5 and 6, with references to the leading authorities on the subject. After enumerating a great variety of things which may be thus judicially noticed, he concludes his remarks on the subject by saying — "In fine, Courts will generally take notice of whatever ought to be generally known within the limits of their jurisdiction. In all these and the like cases, if the memory of the Judge is at fault, he resorts to such documents of reference as may be at hand; and he may deem worthy of confidence".

Without undertaking to specify the several matters which may be the proper subjects of judicial notice in one examination of land titles, it may, I think, safely be said that we may take such notice of the general history of Spain and Mexico, including that of California; of the authority conferred upon and exercised by the Governors and other public officers of California, executive, legislative, and judicial, of the laws, usages and customs of Spain and Mexico, prevailing in California, and especially of the laws, decrees, and regulations made at different periods, in relation to the granting of public lands, and of the general practice and usage of the public officers within the territory in making such grants, and in giving them effect and validity; and in short, that we may and should take such judicial notice of all matters connected with our duties as Commissioners that ought to be generally and publicly known

31.

CASE NO. 1 ND
PAGE NO. 32

in California. And in order that our judicial ~~knowledge~~ knowledge may not be at fault, we should consult approved works of history and law, the published statutes and decrees of the country, the public Archives and records of the former Government, and of the judicial tribunals, and such other authentic sources of knowledge, as will be best calculated to impart the most accurate and reliable information.

It has been deemed necessary thus to consider this subject of judicial knowledge somewhat at large, not only because of its intrinsic importance in the consideration of this and other California titles, but because some doubt has heretofore been expressed in regard to it.

The land which the present claimant, John C. Frémont, asks to have confirmed to him, is claimed under a grant made to Juan B. Alvarado by Governor Manuel Micheltorena, in the month of February, 1844.

The grant originated in a petition of Alvarado to Governor Micheltorena, dated February 23d 1844, in which the petitioner states that being the owner of but a small tract of land, which he had purchased, and which was not sufficient to support his cattle without injury to the estate, and being desirous of increasing his stock, and of promoting the agriculture of the country, he solicited the Governor, according to the colonization laws, to be pleased to grant him ten square leagues of land lying north of the River San Joaquin,

CASE NO. 1 ND
PAGE NO. 33

within the limits of the Sierra Nevada (snow Mountain) on the North, the River Chanchilles on the East, that of the Merced on the West, and the before mentioned San Joaquin, by the name of "Las Mariposas". The petitioner then proceeds as follows:— 'Offering to present to your Excellency the proper plan and draught thereof so soon as the same shall be made with exactness, not doing it at this time for the difficulty of being a wilderness country, and because I desire that my claim for this cause may not be delayed".

Upon the margin of this petition Governor Micheltorena made the following endorsement:—

"Monterey, 27th February, 1844.

"Let the Secretary of State report, and "he may require such other reports as he "may deem expedient, should he need "them.

"Micheltorena"

The petition was then referred by the Secretary of State by another endorsement in writing, to the Alcalde of San José; and the Alcalde, Antonio Mo. Pico, on the 29th of February, 1844, reported that the land was entirely vacant; that it did not belong to any individual, town or corporation; and that he believed for that reason, as well as for the petitioner's being meritorious for his patriotic services and commendable circumstances, there was no impediment to the granting

33.

CASE NO. 1 ND
PAGE NO. 34

to him the land in fee.

On the same day, the Secretary of State, Manuel Jimeno, returned the petition with the report of the Alcalde to the Governor, and also reported to him, over his own official signature, that according to the report of the Alcalde, and the information he had acquired from persons who knew the land, it was ascertained that the same might be granted to the petitioner, who, the Secretary added, "might be favorably considered for the services which he had rendered to the Department."

On the same day the Governor endorsed on the papers the following decree, viz:—

Monterey 29th February 1844.

"Let the title be issued, expressing "that he (the petitioner) is meritorious for "his patriotic services, and consequently, "worthy of preference.

"Micheltorena."

In accordance with this decree, a grant of the land petitioned for, in the usual form of grants, in full property, made and signed by the Governor, and countersigned by the Secretary of State, was issued and delivered to the grantee, bearing date February 29, 1844, and is now produced and given in evidence by the claimant. The original petition of Alvarado, together with the reports of the Alcalde and Secretary, and the Decree of the Governor before mentioned, with a copy of the grant issued

to the petitioner, are all found on file in their proper place in the public archives of the former Government, now in the custody of the United States Surveyor General for California. Upon the original grant to Alvarado there is an entry over the signature of the Secretary of State, that "this patent is registered in the proper book, on the reverse of folio 6," and in conformity to this entry a record is found in the Book of Titles for 1844, showing that the grants were issued to Alvarado as before stated. The authenticity of all these papers has been fully proved, and of their genuineness no question has been made.

It is further shown that Juan B. Alvarado, on the 14th of February, 1847, duly conveyed the land thus granted him, for a valuable consideration, to John C. Frémont, the present claimant.

It has also been fully proved before us, that at the time of the making of the grant to Alvarado, the tract of country where the land was situated was a wilderness frequented by wild and hostile Indians, and that it could not be visited, even for the purpose of making a plan or sketch of the land, except under the protection of a military force, and that it continued in such condition up to the year 1849; that in the year 1849, as soon as it became practicable to do so, Alvarado, the original grantee, at the request of the present claimant, caused a map of the

35. 1

CASE NO. 1 ND
PAGE NO. 36

land claimed to be made, under which the claimant took and continued the possession hereafter stated, which map afterwards, on the 21st of November, 1851, was filed by the claimant, in the office of the U. S. Surveyor General for California, and in conformity to which, and in accordance with the description of the land contained in the grant, the preliminary survey before mentioned has been executed, under the superintendence of the Surveyor General.

It has also been agreed by the counsel, for the purpose of the hearing before this Board, that the quantity of land embraced within the boundaries, described in the grant, is not less than one hundred square leagues.

It has also been shown that at the time of the transfer of the land to the present claimant, he was a Lieutenant Colonel in the Army of the United States, serving in California; that in the Spring of 1847 he was ordered by his commanding General to return to the United States by land; that on his arrival at Fort Leavenworth he was placed under arrest and ordered to the City of Washington, where he was necessarily detained in attending before a Court Martial, and in waiting the action of the Executive upon the sentence of the Court, until the Spring of 1848; that he immediately thereafter set about making preparations for —

CASE NO. 1 ND
PAGE NO. 37

returning to California, to take possession of the land now claimed, and that after employing several men to accompany him to California, and aid him in making a settlement on the land, he set out on his journey across the country, but was detained by the snow among the mountains, losing by the frost a large portion of his party, and did not make this Territory until the month of May, 1849; that in the summer of 1849, he took possession of said land and commenced mining on it, and that he has continued to occupy it ever since, having erected a number of buildings on it, of which one is occupied as a dwelling by a resident agent, and another as a farm house by a person in charge of cattle belonging to the claimant; that he has executed leases of portions of the land, which are occupied by tenants; and that he has made other extensive improvements on it.

It is also in evidence in the case that Juan B. Alvarado, the original grantee of the land, had been for a long time in the public service in California, in various capacities, both civil and military, and that for a period of about five years, from 1838 to 1843, he had been Political Chief and Governor of the Departments, and that he had performed service which might well entitle him to the preference given by the Governor for patriotic services

37.

CASE NO. 1 ND

PAGE NO. 38

in making the grant.

There are the leading facts connected with the titles of the claimant. There are others which will be noticed in considering the several objections which have been made to the confirmation of the claim.

Upon this general view of the case it may be remarked that the grant to Alvarado is in the usual form of grants to land in fee in California; that it was made as well in reference to the colonization or settlement of the country, as in consideration of meritorious services performed for the Government, by the grantee; and that the genuineness and fairness of the grant is beyond doubt or question.

In passing upon the validity of this claim, it is the duty of this Board to be governed by the principles of decision laid down in the Act under which it was constituted. By the treaty of Guadalupe Hidalgo, by which the Territory of California was ceded to the United States, and which treaty is the foundation of all the other rules of decision, the inhabitants of such Territory were, among other things to be "maintained and protected in free enjoyment of their property." The word property used in a similar manner and for the same purpose in the treaty by which Louisiana was ceded to the United States, has undergone the judicial interpretation of the

Supreme Court of the United States, and is therefor not the subject of doubt or controversy. The doctrine of the Supreme Court in regard to the obligation imposed by that treaty upon the Government of the United States, was first announced in the cases of Soulard and Smith v/s The United States, 4 Peter's Reports, 511, and has frequently been re-iterated and confirmed by other decisions. Judge Marshall, in those cases, lays down the principles which were considered as imposed by the treaty, in the following language:-

"In the treaty by which Louisiana was acquired, the United States stipulated that the inhabitants of the ceded territory should be protected in the enjoyment of their property. The United States, as a just nation, regard this stipulation as the avowal of a principle which would have been equally sacred, though it had not been inserted in the contract.

"The term 'property', as applied to lands, comprehends every species of title, inchoate and complete. It is supposed to embrace those rights which lie in contract; those which are executory, as well as those which are executed. In this respect the relation of the inhabitants has not changed. The new Government takes the place of that which has passed away.

"In the full confidence", continues Judge Marshall, "that this is the sentiment by which the Government of

39.

the United States is animated, and ~~which has~~ been infused into its legislation, the Court have sought sedulously for that information which would enable it to discover the actual rights of the parties; to distinguish between claims founded on legitimate contracts with those authorized to make them on the part of the Crown, or its immediate agents, and such as were entirely dependant on the mere pleasure of those who might be in power; such as might be rejected without giving just cause of imputation against the faith of those in office."

This extract from the opinion of Chief Justice Marshall in the first reported case under the Act of 1814, embodies the great and leading principles by which the title of the present claimant, and all others coming before us are to be tested. We are not merely to ascertain whether the title paper of the claimant was executed with all the formalities required by the Mexican laws to make it a complete and perfect grant; for, as we have already seen, if such were our only duty, it would be but a work of supererogation, for such titles need not the confirmation of this or any other tribunal to make them valid; but we are also further to inquire whether in the manner and under the circumstances, under which the title issued an obligation in the nature of a contract was imposed on the Mexican authorities, which ought in equity and good conscience to be carried into effect, and

which could not, in the language of the Chief Justice "be rejected without giving just cause of imputation against the faith of those in office".

Regarding the annunciation of the venerated Chief Justice in the cases of Soulard and Smith, subsequently recognized and reaffirmed by the Supreme Court in other cases, as the just basis on which this Commission ought to act, we shall proceed to inquire whether the title of the present claimant is, or is not, one which ought to be considered as property under the treaty of cession of the Territory of California; whether by the laws, usages, and customs of Mexico, prevailing in California, it would have been regarded and respected as property; and whether, by the law of nations, the principles of equity, and the decisions of the Supreme Court, which are applicable, it ought to be treated as a valid or an invalid title by this Government.

Keeping in mind these great and leading principles, we proceed to the examination of the claimant's title.

Numerous objections are made by the Law Agent to the confirmation of this claim, which it will be necessary for us to consider and pass upon. Our labors will, however, be considerably lightened by the fact that several of the objections are common to other California titles, and have been considered and decided by the Board in the leading case of Cruz Cervantes, or in other

41.

CASE NO. 1 ND
PAGE NO. 42

subsequent cases.

In order to understand the full force of the objections to this claim, it will be necepary to give a copy of the title paper which was issued by the Governor to the grantee. It is as follows, viz:

"Manuel Micheltorena, Brigadier General of the Mexican Army, Adjutant General of the staff of the same, Governor and Commandant General of the Department of the Californias.

"Whereas, Don Juan B. Alvarado, Colonel of the auxiliary Militia of this Department, is worthy for his patriotic services to be prefered in his pretension for his personal benefit and for that of his family, for the tract of land known by the name of the Mariposas, to the extent of ten square leagues (sitios de ganado mayor) within the limits of the snow Mountain (Sierra Nevada) and the Rivers known by the name of the Chanchilles, of the Merced, and San Joaquin, — the necepary requirements, according to the provisions of the laws and regulations, having previously been complied with — by virtue of the authority in me vested, in the in the name of the Mexican nation, I have granted to him the aforesaid tract of land, declaring the same by these presents, his property in fee, subject to the approbation of the Most Excellent, the Departmental Assembly, and to the following conditions—

"First. He shall not sell, alienate, nor mortgage the same, nor subject it to

taxes, entail, or any other encumbrance.

"Secondly. He may enclose it, without obstructing the roads, or the right of way. He shall enjoy the same freely and without hindrance, destining it to such use or cultivation as it may most suit him, but he shall build a house within a year, and it shall be inhabited.

"Thirdly. He shall solicit from the proper Magistrate the judicial posepion of the same, by virtue of this patent, by which the boundaries shall be marked out, on the limits of which he (the grantee) shall place the proper land-marks.

"Fourthly. The tract of land granted is ten sitios de ganado mayor, (ten square leagues) as before mentioned. The Magistrate who may give the posepion, shall cause the same to be surveyed according to the ordinance, the surplus remaining to the nation for the proper purposes.

"Fifthly. Should he violate these conditions, he will lose his right to the land, and will be subject of being denounced (pretended for) by another.

"Therefore, I command that these presents being held firm and binding, and that the same be registered in the proper book, and delivered to the party interested, for his security and other purposes.

"Given in Monterey the 29th day of February, in the year of 1844.

"(Signed) Manuel Micheltorena
"(Signed) Manuel Jimeno, Secretary.

43.

CASE NO. 1' ND
PAGE NO. 44

"This patent is registered in the proper book, on the reverse of folio 6.
"(Signed) Simeno"

The first objection that is made to the confirmation of the claimant's title is, that the grant has not been approved by the Departmental Assembly. This objection arises on the face of the grant, it purporting to have been made subject to such approval, and no approval being shown.

By the Constitutive Act of the Mexican Congress of January 31, 1824, the form of Government was declared to be that of a Federal Republic, and the Mexican Territory was divided into States and Territories similar to that of the United States. On the 18th of August, 1824, a law was enacted by the same Congress, containing certain general provisions, in conformity to which it was declared that the public lands within the States as well as the Territories of Mexico might be granted; authorizing the Legislature of the States to form laws, and regulations for the Colonization of the lands within their respective limits, in accordance with the provisions of that law, and also providing that the Executive Government of Mexico might proceed to the colonization of the Territories (of which California was one) in conformity to the principles of that law. In execution of the last mentioned provision, the ~~

Executive of Mexico, on the 21st of November, 1828, established certain regulations for the Colonization of the lands in the Territories, which regulations, together with the law of 1824, on which they were founded, are understood to have continued in force in California until the conquest of the country by the United States. See Ex. Doc., No 17, 1st Sess., 31st Congress, p. 139 to 142.

By these regulations, the Governors of the Territories were authorized to grant lands, but it was provided that their grants should not be "definitively valid", without the previous consent of the Territorial Deputation, (subsequently called the Departmental Assembly;) to which it was made the duty of the Governor to forward the respective documents, and in case of his failure to obtain such approval, he was then required to report the Documents to the Supreme Government, for its decision

Under the provisions of these regulations, the present grant is declared to be issued "subject to the approbation of the Most Excellent Departmental Assembly."

We have held, in cases already decided, that we would not regard the want of evidence that a grant had been approved by the Deputation or Assembly, as necessarily rendering it unworthy of confirmation, and we have seen no reason to question the correctness of our decision.

Without repeating in detail

45.

CASE NO. 1 ND
PAGE NO. 46

the reasons given in those cases, for the conclusions to which we came, it may be proper to say that by evidence taken before us, and by reference to the public archives of the former Government, it appears to have been the uniform practice of all the Governors of California, (except in a few instances, and those principally in the term of Governor Figueroa) to issue grants previous to any action of the Deputation or Assembly upon the titles, and subject to such approval, as in the present grant; that under grants thus executed by the Governor, the grantees took possession of their lands, either judicially or otherwise, at their election, and that they were allowed to remain in the quiet occupation and enjoyment of them; that the lands were regarded by individuals, by public officers, and judicial tribunals, as the property of the grantees - were the subjects of transfer by instruments of conveyance, and of inheritance and devise - and were sold under probate and insolvent laws for the payment of debts; that titles in considerable numbers, which had for many years been issued by the Governors, either by the neglect of the Governors, or of the Assemblies, had never been acted upon by the latter; that during several years of the latter part of the time of the Mexican rule in California, the political affairs of the Territory were in a semi-revolutionary and unsettled state, and that in consequence but few meetings of the Departmental

CASE NO. 1 ND
PAGE NO. 47

Assembly were held, — and when held, their sessions were brief and almost exclusively devoted to public affairs; that but a small portion of the titles issued, at as late a period as that of the present claimant, appear ever to have been presented to the Assembly; that the journals of the Assembly, especially those of the few last years, are imperfect and confused, leaving it quite probable that titles may have been approved of which no record can be found. Under these circumstances, the Board were of opinion that it would not be in conformity to the provisions of the treaty of Guadalupe Hidalgo, by which the people of California were to be protected in the free enjoyment of their property, nor in conformity to the laws, usages, and customs of the country from which the title was derived, nor in accordance with the principles of equity, to treat the titles issued by the Governors as mere nullities because of the want of the action of the Assembly upon them, or perhaps rather from the want of the evidence of such action. These, and other considerations connected with this question, are stated in the cases of Cruz Cervantes and Pearson B. Reading, heretofore decided; and in accordance with those cases, and the views now expressed, we must hold that the want of approval of the Departmental Assembly is not a valid objection to the confirmation of the present claim.

The next question which arises

47.

CASE NO. 1 ND
PAGE NO. 48

on the face of the grant, is that which grows out of its first condition, which provides that the grantee "shall not sell, alienate or mortgage the land, nor subject it to any taxes, entail or other incumbrance."

It is objected by the Law Agent that the present petitioner is not entitled to a confirmation of the claim, he being a purchaser from the original grantee, and the land, by the terms of the grant, not being subject to alienation.

The earliest grant made in California under the colonization law of 1824, appears to have been by Governor Figueroa, in 1833, in which were inserted, as a condition, a qualified restriction against alienation, as follows:—

"That the grantee shall submit to those conditions which may be established by the regulations to be made respecting the distribution of vacant lands, and that in the meantime neither the grantee nor his heirs shall divide or alienate the land, impose ground rents, entail, reversion, mortgage, or any burden, although it may be for pious purposes".

The restrictive language of this condition, thus first inserted in California grants, under the law of 1824, was evidently borrowed from the Royal Regulations of October 24, 1781, adopted for the government of California, which provide only for the granting of village lots, which were not to be divided, sold or encumbered,

but were to descend to single heirs of the grantees in perpetual succession. — Doc. No. 17, p. 136. It does not appear to have been contemplated by Figueroa, that the restrictions against the division and alienation of the land under the law of 1824, would be perpetual, but that it would only remain until further contemplated regulations for granting vacant lands should be formed, and would then depend, for its continuance, upon the character of such regulations. This qualified restriction against the division and alienation of the land, in substantially the same language, is found in most, if not all of the grants up to the year 1836 or 1837, and in many of a later date. But after the formation of future regulations had become altogether improbable, the qualifying part of the condition which refered to them, appears to have been left out of many of the grants, and also the restriction against the division of the land, and when the condition was retained in any shape, it became, as in the present case, an absolute prohibition of alienation.

Many of the grants made by different Governors after 1836, contain no restriction in any form against alienation. The omission of this condition, in some of the grants, and its insertion in others, as far as can be discovered, was altogether arbitrary, and without system or object.

But whatever may have been

the cause of its insertion in the different forms which it has assumed in different grants, or of its omision in others, we are agued, as we have held in several previous cases, that the insertion of any prohibition against alienation, in the grants of the Governors of California, was unauthorized by the Colonization laws of Mexico, and that all such conditions in grants, were consequently illegal and void.

By the Decree of the Spanish Cortes, of January 4, 1813, for the reduction of the public lands to individual ownership, and which is found in Galvan's collection of decrees and ordinances of the Cortes, that were in force in Mexico, published by order of the Mexican Government, in 1829, all grants of public lands were to be made in full ownership, and subject to alienation; and the grantees were prohibited from entailing them, or transferring them in mortmain — Galvan, 57, 58, art. 2 and 18; Senate Doc. No. 18, 1 Sept. 31st Con., 56, 57.

By the decree of the Cortes of Spain, of the 27th of September, 1820, all real estate was declared to be discharged from every species of entailment, and the propetor was authorized to dispose of one half of it freely, and it was declared that on his death the other half might in like manner be freely disposed of by his successor. And it was further provided that no person should in future be permitted,

under any pretext, to impose any species of entailment on any kind of property or rights, "nor directly or indirectly to prohibit its alienation." — Galvan, 132, 135, art. 1, 2 and 13 — Schmidt's Civil Law of Spain and Mexico, 321 and 329.

By the Decree of the Mexican Congress, of August 7, 1823, it is declared (Sec. 1.) that, "all property which at any time has been entailed, ceases to be so from the 27th of September, 1820, by virtue of the law of that date," (the decree of the Cortes before mentioned,) "and shall continue to be absolutely free, and no one in future is permitted to entail either such or any other property." And the provisions of the Decree of September 27, 1820, so far as they relate to the free alienation of property, are re-asserted and re-affirmed in this decree of the Mexican Congress — 2 Galvan's Decrees of the Mexican Congress: Schmidt's Laws of Spain and Mexico, 309.

These decrees of the Cortes and of the Mexican Congress were in force in Mexico when the Colonization Law of August, 1824, was enacted. That law did not impose any new restriction on the right of alienation, but on the contrary, evidently contemplates that the grants to the colonists would be made in full ownership, or in the language of the common law, <u>in fee</u>.

The provision in the 13th article that "the new colonists cannot dispose of their property in <u>mortmain</u>", very clearly implies that

51.

they might dispose of it in any other manner; and the 12th article of the regulations permits colonists to alienate their lands. Indeed the whole tenor of Mexican legislation was entirely opposed to any restriction upon the free alienation of property, and we have no hesitation in holding, as we have done in former cases, that the restriction against alienation found in the grant in the present case, is null and void, and that it forms no valid objection against the confirmation of the claim.

It may be proper to notice in this place another objection which has been made to the conveyance from Alvarado to the present claimant. It is said to be invalid because the claimant was at the time an alien to the Government of Mexico, and aliens were, by the laws of that Government prohibited from holding lands in California. The conveyance appears to have been made February 14, 1841, after the full sovereignty of California was, de facto, in the United States. It is a settled principle of international law, that the conqueror may prescribe such laws for the government of a conquered people as he may choose. It was only by sufferance that any of the laws of Mexico were allowed to remain in force in California, after the conquest, and it would seem to be very near an absurdity to suppose that those which imposed disabilities on the conquerors were among them.

It is, indeed, well known that

during the period that the Mexican laws were permitted to prevail in California, they were, in numerous instances, executed by American Citizens elected to civil offices which had been created by Mexican laws. The Mexican laws prohibited foreigners from holding civil offices as strongly as it did from holding lands. If the disability after the sovereignty of Mexico had ceased, could continue in the one case, it would equally in the other. We have no doubt it terminated, in both, with the sovereignty of that government.

The next objection to this claim is founded on the second condition in the grant, which is that the grantee "may enclose the land without obstructing the roads or the right of way; that he may enjoy the same freely and without hindrance, destining it to such use or cultivation as it may most suit him, but he shall build a house within a year, and it shall be inhabited."

The grantee not having built a house within a year, it is contended that the grant has become forfeited, and, therefor, that the claimant is not entitled to a confirmation.

The language of this condition so far as it relates to the building of a house, and its being inhabited within a year, is in conformity to that in the Royal Regulations, 1781, before mentioned, in regard to village lots. No provision is found in the colonization law of 1824, or in the regulations of

53.

CASE NO. 1 ND
PAGE NO. 54

1828, specially requiring a house to be built, or specifying any time within which any other act shall be done on the land. The leading object of the law, however, was the settlement of the vacant lands of the nation, and a power in the granting officer to fix a period within which such settlement should be made, and to impose a proper penalty for a non-compliance, may perhaps be implied. A year does not appear to be an unreasonable time for that purpose, and we shall accordingly consider the condition as having been properly inserted in the grant, and proceed to inquire into the effect which it was designed to have upon the rights of the grantee and the Government.

This condition, it may be observed, is what, in the language of the common law would be termed a condition subsequent, the thing required to be done not being to be performed previous to the passing of the title to the grantee, but something by which the grant, after it had taken effect, was made subject to be defeated. Grants made by the English Crown could not be resumed at pleasure, for a breach of a condition subsequent, but only upon a legal proceeding instituted for the purpose of avoiding the grant — termed an Office found. Grants of the Crown lands made by the Governors of the New England provinces, and probably by those of other provinces, usually contained conditions requiring settlements to a specified extent

within limited times to be made upon the penalty of forfeiture in case of non-compliance, and in numerous instances there were failures to perform the conditions. No instance is known in which the grants were held void for a non-performance of their conditions. By the civil law, however, which prevailed in Spain and Mexico, the non-performance of a condition of this description, even between private persons, does not appear to have worked an absolute forfeiture, but only to have made the conveyance subject to the equitable adjudication of the proper tribunals, who, according to the circumstances of the case, either gave or refused time to the party in which to perform his stipulation. 1 Domat, 184-5, sec 218, 222; 2 Story's Eq., sec. 1317.

By the terms of the present grant, the penalty is not left to depend upon the general laws, but is fixed and specified. After enumerating the conditions or things to be performed by the grantee, among which is the building of a house, the grant declares what the penalty for a non compliance shall be, viz: "That should he (the grantee) violate those conditions, he will lose his right to the land, and it will be subject to be denounced by another."

The proceeding of denouncement had long been in use in Mexico, under the Spanish Government, in relation to mines which had ceased to be worked.

55.

CASE NO. 1st ND

PAGE NO. 56

when a mine had been abandoned by one who had formerly occupied it, any other person might denounce it as vacant, by presenting a statement of the fact in writing to the proper tribunal, and asking that possession of it might be given to him. Upon this application the former owner was summoned to appear and contest the question of abandonment. If the decision was in favor of the denouncer, he was declared to be entitled to work the mine, and was placed in possession of it. — Mining Ordinances of 1783, chapter 6; Rockwell's Law of Mining, 51 to 55.

This proceeding seems to be peculiarly adapted to answer the precise objects of the Mexican Government in making its grants. Grants were not made for purposes of revenue, but, unless in consideration of previous services, were wholly gratuitous; the object being to have the land settled upon and occupied, instead of remaining vacant. If a grantee failed to occupy the land as required by the terms of the grant, the Government would gain nothing by recalling it, unless some other person to whom it might be conceded, was ready to settle upon it. The penalty for a non-compliance with the terms of the grant in relation to the settlement of the land, was therefore properly left to be enforced on the application of an individual who desired to make such settlement.

If the land remained vacant after the expiration of a year, any other person who wished to occupy it, might denounce it to the Governor as vacant, and the Governor, after summoning the Grantee and hearing the parties, would decide upon it according to the circumstances of the case. If the neglect of the grantee to occupy had been without good reason, it would be declared forfeited, and a new grant made to the denouncer. But if a reasonable excuse was shown for it, and the Governor had come to believe that the settlements would as soon be made by the grantee as by another, a further time might be allowed for it. Several cases are pending before the Commissioners in which denouncements have been sustained, and the lands regranted. No instances are however found in which land has been successfully denounced after an actual settlement, for the reason that it was not made within the specified time. If a settlement were actually made — though ever so long after the expiration of the year — the whole object of the Government would be answered, and a denouncement made under such circumstances, would be wholly disregarded. Although the grantee had, in the language of the grant, "lost his right to the land, at the end of the year," yet it was only on the condition that while the land was vacant, it should be denounced by another; and no such denouncement

57.

CASE NO. 1 ND
PAGE NO. 58

having been made, the grant continued good afterwards, and was made effectual by a subsequent settlement.

That the fact that a non-compliance by the grantee with the terms of the grant, in making a settlement within the year, did not render the grant a nullity, but only made it subject to denouncement, appears to have been the recognized doctrine of the Governors, as shown by their practice in cases of denouncement, but also from the decision of the highest judicial tribunal in the Territory.

On the 17th of April, 1839, a grant was made by the Governor of the Californias, to one Thomas Bone, with the usual conditions, among which was that which required a house to be built, and inhabited within a year. On the 6th of October, 1842, more than three years after the grant, Bone, without having built a house, or made any improvements on the land whatever, sold it to one Garcia and another, and received a sum in part payment; with a stipulation for further payment at a future day.

Garcia took possession of the land, and in 1844, upon the supposition that Bone had lost his right to the land for want of occupancy, and therefore had conveyed him nothing, denounced the land to the Governor, as having been vacant, and asked to have it granted him,

and further, to be relieved from the payment of the remaining sum he had stipulated to pay for the land. The Governor decided the place to be the property of Garcia, and referred the question of his being relieved from making further payment to Bone for the land, to the Superior Tribunal.

On the 12th of September, 1844, the Superior Tribunal decided that Garcia could not be relieved from making the payments he had stipulated, declaring that although it was true that Bone did not occupy the land within three years, "and therefore, according to his title had lost his right," yet it was also true that the contracting parties had consented to the delivery and receipt of the posession, "without any denouncement of the land having been interposed by any person before this had been done. The settler makes use of what he had acquired by just title; and in this view Garcia stands bound to pay Bone." This decision would not have been made but upon the ground that the grant would remain valid notwithstanding the failure of the grantee to comply with the condition of settlement, unless the land should, while it remained vacant, be denounced by another. We perceive no reason to doubt that this was in conformity to Mexican law.

In the case of the present claimant, there appears not only to have

59.

CASE NO. 1 ND
PAGE NO. 60

been no denouncement of the land granted, but also reasonable ground for believing that if a denouncement had been attempted, it would have proved unsuccessful. The papers connected with the grant show that a settlement within the year could scarcely have been contemplated by the Governor at the time of making it, although the usual form was observed, and as any settlement earlier than 1849, when it was actually made, appears to have been impracticable, by reason of the hostility of the Indians, the denouncer would have been in no better condition to make such settlement, than the grantee, and would scarcely have been allowed to supersede him, especially as the grantee had the advantage of being such for meritorious services.

The remaining conditions in the grant seem to require the grantee to solicit judicial possession of the land of the proper magistrate, and require him to measure it according to ordinance. No time is specified in which these things are to be done. If these requirements are to be considered as conditions upon which a failure of compliance was to impose the penalty of forfeiture by denouncement, which is at best doubtful, they can rest on no stronger ground against the grantee than that in regard to the building of a house, and may be considered as standing on the same footing. There

having been no denouncement for a non-compliance with these requirements, and no valid ground for such denouncement, we must hold, as we have uniformly done in other cases, that a non-performance of them cannot be considered as invalidating the title.

The omission of the grantee to furnish a map or plan of the land, previous to the making of the grant is also objected to by the Law Agent. By the second section of the Regulations of the Mexican Executive, of November 21, 1828, applicants for grants of lands are directed, in their petitions to the Governor, to state the names, country, profession, and the number, description, religion, and other particulars of their families, defining also as distinctly as possible, and describing in a map the land asked for. The object of these statements in the petition, as appears by the third article, is to enable the granting officer to take the proper steps to inform himself "as well in regard to the tract as to the petetioner". If the statement is satisfactory to the granting officer — if it is sufficient to enable him by proper inquiry to obtain the necessary information, and, above all, if he do obtain such information, and act upon it without objection, and grant the land asked for, it would seem to be too late afterwards to question the sufficiency of the application. Under these regulations, maps, or rather

61.

CASE NO. 1 ND
PAGE NO. 62

rough sketches, drawn without survey or measurement, were usually presented to the Governor by applicants, though they appear to have been sometimes omitted. In many, perhaps most cases, these rough sketches are useful and important in identifying the land; but when the limits of the tract are capable of being ascertained by the written description in the petition, the map might, for every practical purpose, be dispensed with. In the present case, the limits of the land described in the petition appear to have been well known. The Alcalde, to whom the papers were referred, reported that the land was entirely vacant, and when afterwards granted by the same description, the grant would furnish all necessary information in making future grants. It is not seen how any injury could accrue, either to the public or individuals, from the course adopted by the Governor in dispensing, for the time being, with the production of a map, and allowing it to be afterwards supplied. And as the sufficiency of the application seems to be a matter within the Governor's province to determine, we do not think this objection should operate against the validity of the claim.

Connected in some degree with the last objection, is another, which was also made and insisted on by the Law Agent. It is said that the claim should be treated as invalid for the want of a

severance of the land from the public domain of Mexico at the time of the treaty of cession of the territory to the United States. In support of this objection, Billebois v. The United States, 10 How., 541, and the United States v. Boisdore, 11 How., 63; and other recent cases of like character in the Supreme Court, are relied upon.

It is not held by these cases that there should have been an actual severance of the land from the public domain, by survey and the marking of boundaries, but that the land intended to be granted should have been so described in the grant as to be capable of such separation, "either by actual survey, or some ascertained mode of separation recognized by a competent authority" of the former Government. United States v. Arredondo, 13 Peters, 133. United States v. Forbes, 15 Peters, 173, 11 Howard, 127. In the cases cited by the Law Agent the descriptions in the grants—such as a certain number of arpents in a named district of the Territory, on a named creek or river, or on the waters of certain Bays, &c.—were held to be too indefinite and uncertain to admit of an identification of the land by survey or otherwise. In these cases there was not any land pointed out as subject to individual ownership, and the grants were held void for uncertainty.

We are not satisfied that the grant in the present case is liable to this

63.

objection. The system of granting land in Louisiana and Florida was very different from that in California under the Mexican Colonization Law. In the former, there were, under the Spanish Government, recognized official surveyors, and incipient title papers were usually issued to applicants in the form of warrants of survey or concepions, requiring the land to be surveyed in contemplation that after a survey, a complete title would be issued. Menard's Heirs v. Massey, 8 How., 293. In California there was no such official surveyor, and, in fact, so far as is known, any private professional surveyor, until about the time of the conquest of the Territory by the United States; and lands were never surveyed in advance of the issuing of final title papers. It was therefore necessary to adopt a different mode of separating the land granted from the public domain from that which might, under other circumstances, have been pursued. Applicants were required to furnish the granting officer with as correct a description of the land as could be made without survey or measurement; and if, on inquiry by him, he was satisfied with the description, and found the land vacant, he issued a grant for the whole tract embraced by the description, but limiting the quantity to be finally held by the party, to a certain number of varas, miles or leagues, and providing that the surplus, when the land should be measured, should revert to the Government. This has been the usual, if not the universal mode

of making grants in California, under the Mexican Colonization Laws. All the grants that have come under my observation contain the provision that the surplus land embraced in the description in the grant shall, after its measurement, remain to the nation.

The effect of this mode of making grants would be to separate at once from the public domain all the land described in the grant for the use of the grantee, subject to a Reduction of its limits, if by actual measurement of the specified quantity, the tract should be found of greater extent than was required. But the grantee could have no more land than that contained in the description, because the quantity might fall short of that named in the grant. Until the contemplated measurement the description of of boundaries would be treated by the granting officers as separated from the public domain, and as not subject to farther grant. Another consequence of this system of making grants would be that the whole tract being severed from the public domain for the benefit of the applicant, he would be at liberty, in case there was an excess in the tract over the quantity of land specified, to make his selection, in reasonable form from such parts of it as he preferred. That this was understood to be a right of the grantee has been proved in this case by two intelligent witnesses, one of whom had been an Alcalde for several years, and another a Governor of the Territory. And such,

65.

CASE NO. 1' ND
PAGE NO. 66

so far as can be ascertained from cases which have come before the Board, appears to have been the uniform practice in California, in giving juridical posession of lands to grantees of the Government. If in the present case the boundaries which are mentioned and described in the grant, may be considered as those which should separate the land from the public domain, as we think they must, there can be no question but that they are sufficiently deffinite and certain for that purpose. We have already seen that the grant remained in full force and validity during the continuance of the Mexican authority in California, and consequently the right of the grantee to select the quantity of ten leagues within the described land, which right was incident to the grant, and a part of it — was in the grantee when the sovereignty of the country paped from Mexico to the United States. This right of selection being thus incident to the grant, and thus constituting a part of it, was properly protected by the treaty, and might be well exercised afterwards.

We think it has been well and properly exercised, and that this objection ought not to prevail.

The only remaining objection which has been made to the confirmation of this claim is founded on the facts appearing in the evidence that mines of gold are found on the land. It is not understood to be insisted that this fact

furnishes a valid objection to the confirmation of the claim, but it is said the confirmation should be made with a reservation of a right in the Government of the United States to the mines.

It was well known to Congress at the time of the papage of the Act of March 3, 1851, constituting this Commission, that there were large and extensive tracts of land in this State embracing mines of gold, and that some portions of these lands were claimed under Mexican titles.

If it had been conceived that the Government of the United States had any interest in mining lands claimed by individuals, that needed the aid of the Commissioners to protect, Congress would doubtless have made some provision for such protection; and its omission to do so furnishes a sufficient reason for our declining to interfere in the matter.

We are not, however, satisfied that the Government of the United States acquired any interest, by the treaty, in mines, on the lands of individuals, other than that incident to its power of sovereignty. The right of the Spanish Crown in mines (and that of the Mexican Government is believed to have been the same) appears to have been rather a sovereign than a proprietary right. A percentage was claimed and exercised on the production of mines, and where a mine was

67.

not worked by the owner of land, the Crown might permit it to be done by another, he making compensation to the owner for the actual injury to the soil and fixtures. (Mining Ordinances of 1783, chap. 6 and 7. Rockwell on Mines, 49, 144, 162, 407.) The former is the exercise of the taxing power, and the latter seems to be that of the power of taxing private property for the general benefit of the public, and both may properly be embraced within the sovereign right of eminent domain. Ward, in his work on Mexico says that "the King of Spain (individually) was not proprietor of a single mine," and that there is "not one instance since the conquest of an attempt having been made by the Government to interfere with the mode of working by individuals, or to diminish the profits of the successful adventurer by exacting, under any plea or pretence, from the more fortunate a higher rate of duties than that which was payable by the poorest miner to the Royal Treasury."

Whatever the theory might have been in regard to the ownership of mines by the Crown of Spain or the Government of Mexico, it seems very evident that practically the right was embraced within the general power of sovereignty, and was never treated as that of a proprietor. Such being the case no proprietary right in mines on the lands of individuals would pass to the Government of the

United States, by the treaty of Mexico, and there being no reservation of Mines in the grant in the present case, there was no interest in Mexico to be transfered to the United States.

For these reasons, we do not think that the title of the claimant should be treated as subject to the reservation suggested by the Law Agent.

The extent, and the supposed value of the land claimed in this case has induced us to examine the various questions arising in it somewhat in detail. We are satisfied that the title papers presented in support of the claim are all genuine and authentic; that the grant was made as well in reward for meritorious services to the Mexican Government, as to promote the general object of the Colonization Law; and if the Territory of California had not been transfered to the United States, we cannot doubt that the title would have been respected and maintained, and the grantee, and those claiming by him secured and protected in its full enjoyment. On the whole we are of opinion that, in accordance "with the treaty of Guadalupe Hidalgo, the law of nations, the laws, usages, and customs of the Government from which the claim is derived, — the principles of Equity and the decisions of the Supreme Court of the United States," the claim is valid and ought to be confirmed. And we accordingly

now enter a decree of finial confirmation. I am authorized to say that Commissioner Thornton concurs in the result.

(Signed) Hiland Hall.

Claim No. 1,

John C. Frémont, claimant,
Decree of Finial Confirmation.

This Board, upon full consideration of the various grounds affecting the validity of said claim, having come to the conclusion that the claim is valid, now proceeds to make, and does make the following decree, or report of finial confirmation, viz: It is decreed that the said claim be confirmed to the extent and quantity of Ten Square Leagues, being the same land described in the grant and map filed in the Office of the United States Surveyor General, for California, November 21, 1851, and of which map an official copy was used as evidence in this case, and the same land proved to have been possessed by the claimant; Provided, that the said quantity of ten square leagues now here confirmed to the claimant be contained within the boundaries called for in the said grant and map; and if there be less than the said above named quantity within the said bounds, then we confirm to the claimant that

that less quantity.

Given under our hands this 27th day of December, 1852.

(Signed) Hiland Hall
(") Harry I. Thornton } Com^rs.

Filed in Office, San'y 10th, 1853.

(Signed) Geo: Fisher,
Sec'y.

71.

CASE NO. 1 ND
PAGE NO. 72

No. 5. (Copy)

Office of the Board of commissioners of California Land Claims.

San Francisco, March 10, 1852.

Samuel D. King, Esq'r,
Surveyor General:

Sir: There is pending before the Board of commissioners a petition in favor of John Charles Frémont, being No. 1 on the Docket of the Board, claiming a tract of land under a grant from Governor Manuel Micheltorena to Juan B. Alvarado, dated February 29th, 1844, which tract of land is called Las Mariposas, and is described as follows: to the extent of ten sitios de ganado mayor, between the boundaries of the Sierra Nevada and the Rivers known by the names of the Chanchilles, La Merced, and San Joaquin.

Will you please inform the Board whether the Mexican Archives in your Office show that such a grant was made; whether it was approved by the territorial or departmental deputation, and when; whether the papers relating to said grant appear in all respects fair and genuine, and whether any particular circumstances have come to your knowledge calculated to cast suspicion on the fairness and validity of the claim.

Very respectfully, your's
(Signed) Geo: Fisher,
Sec'y.

72.

CASE NO. 1 ND

PAGE NO. 73

Surveyor General's Office,
San Francisco,
March 13th, 1852.

To the Secretary of the Commissioners
of California Land Claims:

Sir,

In reply to your inquiry No. 5, I have the honor to state, that, there is among the Archives, an Expediente No. 352, purporting to show that such a grant was made as is specified in your inquiry. Said document does not show the approval of the Departmental Assembly.

The papers in that case appear fair and genuine. A map purporting to be of the tract of land claimed, was filed in the archives by Col. J. C. Frémont on the 20th November 1851, and filed with said Expediente.

Very respectfully, your's,
(Signed) Samuel D. King,
Surveyor General.

Ap 54

B

73.

CASE NO. 1 ND
PAGE NO. 74

Expediente promovido por el Sor Coronel de Milicias auciliares C. Juan Bta. Alvarado, en solicitud del terreno nombrado las "Mariposas."

Año de 1844.

(Numero 252)

74

CASE NO. 1 ND
PAGE NO. 75

Sello Cuarto Dos Reales.
Habilitado provisionalmente por la Aduana Marítima del puerto de Monterey, en el Departamento de las Californias, para los años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco —

Micheltorena. Pablo de la Guerra.

(Sello.)

Exmo Sor Gov.r

Monterey Feb.o 27 de 1844.

Sr.e el S.rio del Despacho tomando otros si los necesita —

/firmado./
Michaltorena.

Juan B. Alvarado Coronel de la Milicia auxiliar de este Departamento a V. E. con el respeto debido hago presente: Que siendo actualmente propietario (por compra que hize) de una muy corta estension de terreno que no es suficiente para mantener los bienes de campo que en él se hallan, sin perjuicio de las fincas igualmente establecidas, y deseoso de hacer progresar estos conforme cabe al mismo tiempo al fomento de la agricultura é industria del país, pido conforme a las leyes de Colonizacion se sirva V. E. —

CASE NO. 1 ND
PAGE NO. 76

concedérme Diez sitios de ganado mayor, al Norte del Rio de S.n Joaquin, dentro de los terrenos de la Sierra Nevada en el mismo rumbo, el rio de Chauchillas al Oriente, el de la Merced al poniente y el mencionado de S.n Joaquin con el nombre de "Las Mariposas" ofreciendo á V.E. presentar el plano i diseño correspondiente luego que con exactitud sea levantado, no haciendolo ahora por la dificultad de ser un campo desierto á la inmediacion de los indios salvajes, y porque deseo no se interpesca por esta circunstancia mi pretencion.—

S.S.J. De las buenas intenciones de V.E. en favor de los pobladores del pais, que gobierna, espero el resultado mas favorable si asi fuere de justicia en que recibiré gracia.

Rancho del Alizal
Feb.o 23 de 1844.

/Firmado/ Juan B. Alvarado.

Como dispone el E.S. Gobernador para la precedente instancia al Alcalde 1.o de S.n José para que se sirva informar sobre

96.

su contenido.

Monterey 26 de Febº de 1844.

(Firmado) Manl Dimas.

Sor Srio del Despacho.

El terreno que pretende en esta instancia Don Juan B. Alvarado, se halla enteramente baldio; no pertenece á pueblo particular ni corporacion alguna, y aun que por estas razones, como por la de ser el solicitante acreedor por sus patrioticos servicios y recomendables circunstancias, no hay embarazo en que se le conceda en propiedad el terreno citado. Es cuanto tengo que informar á V. S. en contestacion á su Supr decreto que antecede, cuyo parecer sugeto á la determinacion de V. S. que sea la mas acertada.

Pueblo de San Jose Guadalupe Febrero 29 de 1844.

(Firmado) Antonio Mª Pico.

Exmo Sor Gobernador.

Segun el informe que ha el Juez de Sn Jose y los que yo he adquirido de las personas

que colinda con el terreno le viene en conocimiento que puede concederse al Sor que lo pretende á quien se le puede atender por los servicios que ha prestado al Departamento. El Superior discernimiento de V. E. resolverá lo que tubiere por conveniente.

Monterey 29 de Febo de 1844.—

/Firmado/ Manl Jimeno.

Monterey Febo 22 de 1844.

Espídasele el título que solicita como acreedor por sus patrióticos servos y por consiguiente digno de preferencia.

/Firmado/ Micheltorena

Monterey 29 de Febrero de 1844.

Vista la peticion con que da principio este Expediente, informes que preceden y los servicios patrióticos del solicitante, con todo lo demas que se tuvo presente y ver convino, de conformidad con las leyes y reglamentos de la materia declara á D. Juan Bta Alvarado dueño en propiedad de el terreno conocido con el nombre de las "Mariposas"

78 E B
CASE NO. 1" ND
PAGE NO. 79

dentro de los terminos de la Sierra Nevada, y los Rios llamados los Chanchillas, la Merced y Sn Joaquin. Librese el correspondiente despacho tomese razon en el libro respectivo y dirigase este Espediente á la Exma Asamblea Departamental para su aprobacion.

Manuel Michelteña General de Brigada del Egercito Mejicano Ayudante General de la Plana Mayor del mismo, Gobernador Comandte General é Inspector del Departamento de Californias.

Por cuanto Don Juan Bta Alvarado Coronel de la Milicia auxiliar de este Departamento se ha hecho acreedor, por sus Patrioticos servicios, para que se le atienda de preferencia á la pretencion que hace, para su beneficio personal y el de su familia, del terreno conocido con el nombre

CASE NO. 1 ND
PAGE NO. 80

de las "Mariposas" en estencion de diez sitios de ganado mayor entre los terminos de la Sierra Nevada y los Rios conocidos con el nombre de Chanchilas, de la Merced y San Joaquin; practicadas previamente las diligencias y averiguaciones concernientes, segun lo dispuesto por leyes y reglamentos, usando de las facultades que me son conferidas á nombre de la Nacion Mejicana, he venido en concederle el terreno mencionado, declarandole la propiedad de el por las presentes letras, sugetandose á la aprobacion de la E. Asamblea Departamental y á las condiciones siguientes.

1ª No podra venderlo, enajenarlo ni hipotecarlo, empeñarlo ni vincularlo ni otro gravamen algº

2ª Para cercarlo sin perjudicar las travecias, caminos y servidumbres; lo disfrutará libre y exclusivamente destinandolo al uso ó cultivo que mas le acomode, pero dentro de un año fabricará casa y estará habitada.

3ª Solicitará del Juez respectivo que le de posesion juridica en virtud de este despacho, por el cual se le demarcarán los linderos, en cuyos limites pondrá las mojoneras correspondientes. —

80. Ey

CASE NO. 1 ND
PAGE NO. 81

4ª El Terreno de que se hace donacion es de diez sitios de ganado mayor, como se lleva referido. El Juez que diere la posecion lo hará medir conforme á Ordenanza quedando el sobrante que resulte á la Nacion pª los usos convenientes.

5ª Si contravinieren á estas condiciones perderá su Derecho al terreno y sera denunciable por otro.

En consecuencia mando que teniendose por firme y valedero el presente, se tome razon del en el libro respectivo entregandosele al interesado pª su resguardo y demas fines.

Dado en Monterey á los 29 dias del mes de Febrero del año de 1844. = Manl Micheltorena = Manl Jimeno Secretario = Sueda tomada razon de este Despacho en el libro respectivo á fl. 6. vta = Jimeno. =

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

I, Samuel, D, King, Surveyor General of the United States for the State of California, and, as such, now having in my office, and under my charge

CASE NO. 1 ND
PAGE NO. 82

and custody, a portion of the archives of the former Spanish & Mexican Territory or Department of Upper California, do, hereby, certify that the nine preceding & hereunto annexed pages of tracing paper, numbered from nine inclusive, and each of which is verified by my initials (S.D. RR.) exhibit true and accurate Copies of certain Documents now on file and forming part of the said Archives in my Office.

In testimony whereof I have hereunto signed my name, officially, and affixed my private Seal (not having a seal of office,) at the City of San Francisco, Cal, this twelfth day of November A.D. 1851.—

(Seal)

(Signed) Sam'l D. King.
Dist Gen'l Cal

Filed in Office Jany 21st 1852.

(Signed) J. B. Casr.
Secty—

83.

CASE NO. 1 ND
PAGE NO. 83
83

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

I, Samuel D King, Surveyor General of the United States for the State of California and, as such, now having in my office, and under my charge & custody a portion of the Archives of the former Spanish & Mexican Territory or Department of Upper California do, hereby, certify that the preceding and hereunto annexed page of tracing paper, verified by my initials (S.D.K.) exhibits a true & accurate Copy of a certain Document which has been filed in this office, as belonging to said Archives.—

In testimony whereof, I have hereunto signed my name officially, and affixed my private Seal, (not having a Seal of office,) at the City of San Francisco, Cal, this 21st day of November A.D. 1851.

Seal

(Signed) Sam'l D. King
Surv Genl Cal.

Filed in office Jany 2d 1852.
(Signed) - J. B. Casr -
Secty -

84.

CASE NO. 1 ND
PAGE NO. 84

Record of Proceedings instituted by Citizen Juan Bautista Alvarado, Colonel of the Auxiliary Militia, soliciting the tract of Land, called Las Mariposas.

Anno 1844

(Number 252)

85.

CASE NO. 1 ND
PAGE NO. 85

To His Excellency the Governor.

I, Juan B. Alvarado, Colonel of the Auxiliary Militia of this Department to your Excellency with due respect do represent:
That being actually the owner, (by purchase which I made) of a very small tract of land, which is not sufficient to support the cattle with which it is stocked, without injury to the estates, likewise there established, and being desirous of increasing it, at the same time to contribute to the spreading of the agriculture & the industry of the Country, I solicit your Excelly, according to the Colonization Laws to be pleased to grant me ten "sitios de ganado mayor" (ten square leagues of land) south of the River San Joaquin within the limits of the Snow Mountain (Sierra Nevada) in the same direction the Rivers Chanchillason the East, that of Merced on the West, and the before mentioned of San Joaquin, with the name of the "Mariposas" offering to present to H.E. the proper plan & draught thereof so soon as the same shall be made with exactness, not doing it at this time for the difficulty of being a wilderness country on the confines of the wild Indians, and because I desire that my claim

CASE NO. 1 ND
PAGE NO. 86
86

for this cause may not be delayed.

Therefore, I hope from the good intentions of S. E. in favor of the improvements of the Country, the most favorable result, if it be in justice, by which I will receive favor.

Ranchos del Alizal 22d Feby 1844.

/Signed/ Juan B. Alvarado.

Monterey 27th Feby 1844.

Let the Secretary of State report, and he may require such other reports as he may deem expedient should he need them.

/Signed/ Micheltorena

As directed by His Excellency the Governor, let the preceding petition be referred to the 1st Alcalde of San José, that he may be pleased to report thereon.

Monterey 26th Feby 1844.

/Signed/ Man.l Jimeno.

To the Secretary of State.

The Lands solicited in this petition, by Don Juan, B. Alvarado,

87 f 2

CASE NO. 1 ND
PAGE NO. 87
87

entirely vacant; it does not belong to any individual town or to any corporation, and I believe that for these reasons, as well for that of the Petitioner being meritorious for his patriotic services, & commendable circumstances, there is no impediment for granting him the said land in fee. This is all I have to report to your Honor in answer to your preceding Superior order, which opinion I submit to the decision of your Honor, which will be the most proper one.

Town of San Jose Guadalupe Feby 29th 1844.

[Signed] Antonio Mª Pico.

To His Excellency the Governor.

According to the Report of the Magistrate of San Jose and the information I have acquired from persons, who know the land, it is ascertained that the same may be granted to the Petitioner, who may be favorably considered for the services which he has rendered to the Department. The Superior judgment of V. E. will decide the expediency.

Monterey 29th Feby 1844.

[Signed] Manl Jimeno

CASE NO. 1 ND.
PAGE NO. 88

88

Monterey 22d Feby 1844.

Let the Title be issued, expressing that he (the petitioner) is meritorious for his patriotic services, & consequently worthy of preference.

(Signed) Micheltorena.

Monterey 29th Feby 1844.

Having considered the petition which is the beginning of this Record of Proceedings (Expediente) the preceding Reports & the patriotic services of the Petitioner, with every thing worthy of consideration in the premises, in conformity with the Laws & Regulations upon the subject, I declare Don Juan Bautista Alvarado, the owner in fee of the tract of land known by the name of the "Mariposas" within the boundaries of the Snow Mountain, (Sierra Nevada) and the rivers called the Chauchillas, the Merced and San Joaquin. Let the proper Patent be issued; let it be registered in the respective Book, & let this Record of Proceedings be transmitted to the Most Excellent the Departmental Assembly, for its approval. —

89.
CASE NO. 1 ND
PAGE NO. 89

Manuel Michel Torena, Brigadier General of the Mexican Army, Adjutant General of the Staff of the same, Governor and Commandant General & Inspector of the Department of California. —

Whereas Don Juan B. Alvarado, Colonel of the Auxiliary Militia of this Department is worthy for his patriotic services, to be preferred in his pretention for his personal benefit, and that of his family, for the tract of land known by the name of the "Mariposas," to the extent of ten square leagues (sitios de ganado mayor) within the limits of the Snow Mountain (Sierra Nevada) and the Rivers known by the name of the Chauchillas of the Merced & San Joaquin, the necessary requirements, according to the provisions of the Laws & Regulations having been previously complied with by virtue of the authority in me vested, in the name of the Mexican Nation, I have granted to him, the aforesaid tract of land, declaring the same, by these presents, his property in fee subject to the approbation of the Most Excellent the Departmental Assembly and to the following conditions:

CASE NO. 1 ND
PAGE NO. 90

1st He shall not sell, alienate nor mortgage the same nor subject it to dotes, entail or any other incumbrance.

2d He may enclose it without obstructing the crossings, the roads or the right of way. He shall enjoy the same freely without hindrance, destining it to such use or cultivation as it may most suit him, but he shall build a house within one year, and it shall be inhabited.

3d He shall solicit from the proper Magistrate the juridical possession of the same, by virtue of this Patent, by which the boundaries shall be marked out, at the limits of which he (the grantee) shall place the proper landmarks.

4th The tract of land granted is Ten Sitios de ganado mayor (ten square leagues) as before mentioned. The magistrate who may give the possession, shall cause the same to be surveyed according to the ordinance, the surplus remaining to the Nation, for the proper purposes.—

5th Should he violate these conditions, he will lose his right to the land, and it will be subject to being denounced (pretended for) by another.—

91. & 4

CASE NO. 1 ND
PAGE NO. 91

91

Therefore, I command that the presents being held firm and binding, and that the same be registered in the proper Book and delivered to the party interested for his security and other purposes.

Given in Monterey this 29th day of month of February in the year of 1844. — Manl Micheltorena — Manl Jimeno Secretary —

This Patent is registered in the proper Book, on the reverse of folio 6. — Jimeno. —

I certify the foregoing to be a correct translation from the Spanish. —

/Signed/ Geo. Fisher
Secty

Filed in Office Jany 21st 1852.

/Signed/ Geo. Fisher
Secty —

92.91

CASE NO. 1 ND
PAGE NO. 92

92

(Place of a Stamp on the original)

Año de 1844 =

212 Dn Juan B. Alvarado en 29 de Febrero de 1844.
Se le dió título del terreno llamado nombrado las Mariposas en estencion de diez sitios de ganado mayor. =

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

I, Samuel D. King, Surveyor General of the United States for the State of California, and, as such, now having in my office and under my custody a portion of the Archives of the former Spanish & Mexican Territory & Department of Upper California, do, hereby, certify that the above & foregoing are true & accurate extracts from a small half bound book being a register of grants & titles, which is now on file and forms part of the said Archives in this office.

In testimony whereof,

I have hereunto signed my name officially, and affixed my private seal, (not having a seal of office) at the City of San Francisco, Cal, the 21st day of August 1852.

Seal

(Signed) Jno. B. King
Sen Genl Cal

Filed in Office Septr 17th 1852.

(Signed) Geo. Fisher.
Secty.—

Translation of the preceding Spanish text numbered "212"

Year of 1844.

On the 29th of February 1844 The Grant of the tract called "Las Mariposas" was given to Juan B. Alvarado, to the extent of ten square leagues. (Sitio de Ganado Mayor)

I certify the foregoing

94.92 to be a true & correct Translation
of the preceding Spanish Text
numbered "212".

/Signed/ Geo Fisher
Secty—

CASE NO. 1 ND
PAGE NO. 94
94

C

95.

CASE NO. 1" ND
PAGE NO. 95

95

Know all men by these presents, that, I John Charles Fremont, do hereby forever release & wholly acquit & discharge John B. Alvarado from all actions, suits damages & liabilities whatsoever for or on account of any & all covenants, agreements & liabilities contained in a certain act or conveyance executed to me by the said Alvarado, bearing date at Monterey on the 10th day of February 1847, passed before Walter Colton, Chief Magistrate, by which said Alvarado sold & conveyed to me ten leagues of land, called "Las Mariposas," granted to said Alvarado by Manuel Micheltorena, Governor &c in the year 1844; the object of this deed & release being wholly to discharge said Alvarado from all liability on account of any covenants or warranties in said act of sale contained & thereby to render him a competent witness, but without in any other manner impeaching said act of sale.

In witness whereof I have hereunto set my hand & seal this 11th day of August, 1852.—

Attest. (Signed) John C. Fremont

(Sgd) J. G. Brown. by his atty J. C. Palmer.

Filed in Office August 11th 1852

(Signed) Geo. Fisher
Secty —

CASE NO. 1 NE
PAGE NO. 96

97. 2

CASE NO. 1 ND
PAGE NO. 97

Office of the Board of
Commissioners of California
Land Claims.

San Francisco Augt 11th 1852.

On this day before me James Hilton, one of the Commissioners for ascertaining & settling private land claims in the State of California, came Juan B. Alvarado a witness produced in behalf of the Claimant John Charles Fremont, whose petition is No 1 on the Docket of the Board, and was duly sworn. His evidence being in Spanish, was interpreted by the Secretary of the Board. The Law Agent was duly notified & did attend.

In answer to interrogatories propounded by the Claimant John C. Fremont, the witness answers as follows:

Question. Look at the original paper now produced & such a copy from the archives is on file in this cause, and state whether you are the grantee therein named?

A— I am the grantee therein named and the grant annexed to this Deposition and marked J.A. is the original grant issued to me of the land therein mentioned.—

Q. Was that original grant made to you at the time it bears date?

Ans- It was & delivered into my possession.

Q. How long did it remain in your possession?

A. Until sold to Col Fremont.

Q. Where did you live at the time the Grant was made to you and what was your family?

A- I had a family of three children & lived in Monterey.

Q. What offices did you then hold & what other offices have you held in California prior to the conquest?

A- I was then Col of Militia, as stated in the title. At the age of seventeen I was Chief Clerk of the Commissary department in 18 or 1826- afterwards Secretary of Territorial Deputation in the year of 27 or 28. afterwards Senior member and ex-officio President of the Territorial Deputation, afterwards the principal controller of the revenue, afterwards Inspector of the Custom House at Monterey, afterwards in 1827 Political Chief of the Territory, afterwards in 1833 Governor of the Department of California & Col of Militia, and

99. 3

CASE NO. 1 ND
PAGE NO. 99

other offices. Held the office of Governor from 1833 until 1845.—

2. Who was Governor of California at the time the Grant above named was made to you?

Jos. Manuel Micheltorena was Governor and Manl. Jimeno was Secretary of the Department. Antonio. M. Pico was Alcalde of the District of San José.

3. Do you know the handwriting of said Micheltorena and Jimeno & Pico? If so state whether the signatures to the original grant are in the handwriting of said Micheltorena & Jimeno.

A. I know their signatures & the signatures in the original grant are the signatures of said Micheltorena & Jimeno.

4. Look at the expediente in this cause now produced from the archives and state whether the original petition and signature thereto, are in your handwriting? and whether the signatures of said Jimeno & Micheltorena on the same are genuine & whether the signatures of the said Antonio. M. Pico to his respective on the same is genuine and whether you presented that petition at

the time it bears Date?

Ans— The petition is in my hand writing, the signature is mine, and the signatures of said Semeno & Michelena on the same are genuine, and the signature of Reis to his report thereon is genuine and said petition was presented by me at the time it bears date, and the original title, above spoken of, issued upon the said petition.

Q— State whether the paper, on which said original grant is written was the legal class of stamped paper at the time for grants of that kind?

A— This was the legal style of stamped or sealed paper, but under certain circumstances grants might be made on paper of less value.

Q. State whether you as Governor of California made many grants of public lands, and whether you were well acquainted, when Governor, with the form of granting public lands.

A— I made a great many grants of public lands when Governor, and was well acquainted

acquainted with law in usages as to making such grants.

Q.— State whether the above mentioned original grant to you was made in accordance with the laws & usages at the time in force as to granting public lands in California?

A— It was—

Q.— State what was the condition of the country, where the land granted to you lies, at the time of the grant, and whether it was then practicable to make a survey or plan of the land?

A— It was a vacant country or wilderness and it was then impossible to have made a survey or plan of the land without the protection of a sufficient military force owing to the hostile Indians.—

Q.— From your knowledge of the laws & usages of granting public lands in California at the time of the said grant, was it competent for the Governor to dispense with the survey or plan where the making of a plan or survey was

impracticable from hostile Indians or other causes, and could the Governor in such case make a valid grant without such plan or survey annexed to the petition?

A— By the customs & usages of the country.

Q— What was the object of refering a petition for a grant of lands to an Alcalde or other officer to report thereon and what was the effect of such officer's report?

A— The object was to ascertain whether the land was vacant & whether the grant could properly be made, the Governor could make the grant without any reference. The report was for the information of the Governor and was not binding upon him.

Q. Was the original to you above spoken of in the form usually adopted by Governors of California, where it was intended to grant the land in full property?

A— This is one of the usual forms.

Q— You have stated that at the

103. 5 time the grant was made to you, it was impracticable to make a survey or plan of the land owing to the hostile Indians; state how long the country continued in that condition?

A— It was impossible for me to make a survey of the land until 1849— and then only from information.

Q— Look at the original plan of the land made and certified by you and now produced from the Archives and state when it was made and for what land it was made.

Ans— It was made in 1849, it was made of the Mariposas and intended to represent the land granted to me. I cannot state what month of the year, I sent it to Col Fremont in 1849.—

Q— What was the reason you did not get the grant approved by the Departmental Assembly?

A— No map had been made and the Assembly held only short extraordinary sessions & was removed to Los Angeles.

Q— Did you ever know a grant of land in California, made by a Governor, denied invalid because it has not been approved by the Depart-

Departmental Assembly?

Ans- Never. The grant has never been deemed invalid for want of the approval of the Departmental Assembly.

Q.- Look upon the act of sale by you to Col Fremont, now produced (hereto annexed, marked A) and state whether you made the same at the time it bears date? and whether your signature thereto is genuine, and whether the same was passed before Walter Colton, a justice of peace at Monterey, and whether said Colton then exercised the office of justice of peace or magistrate at Monterey and whether his signature is genuine?

Ans- I did make the said Act at the time it bears date, my signature thereto is genuine, the act was passed before Walter Colton, who then exercised the office of Magistrate at Monterey and his signature thereto is genuine.

Q- What was the effect of the 1st condition annexed to the original grant to you and was such condition often inserted in grants of lands by California Governors, and if so, why was such condition inserted?

Ans- The condition had no effect. The Governor in inserting

CASE NO. 1 ND
PAGE NO. 105

that condition had in view the preventing of monopolies by preventing parties from selling their lands and also playing for more.

Q.— Where a grant was made for a certain quantity of land, so many leagues, for instance, within certain boundaries and the boundaries mentioned in the grant included more than the number of leagues granted, how was the selection made and who had the option where the number of leagues granted should be located within the limits mentioned in the grant?

Ans— The Government had no rules, the party chose the direction he preferred, in locating his grant.

Cross interrogatories propounded by the Law Agent.

Q— Under what circumstances and under what law could grants of land be made upon papers of less value than that of the 1st class?

A— I do not recollect the provisions of the regulations.

Q— What usages do you refer to when you say the grant was made in accordance with the usages in force at the date of the Grant?

Ans- Refered to the usage of the Governor at the time; the usage of the respective Governors was different in reference to the conditions of the Grant; some inserted more and some inserted less.

Q- What right had the Governor to make a grant without plan or survey being previously furnished and made, or to dispense with a plan in as much as a plan or diseño was required under the regulations of 1828?

Ans- I believe the each Governor had the power to grant lands without the plan being produced, as he had the power to modify the grant as he pleased.

Q- Under what circumstances could the Governor make the grant without a reference for information? and when they was there not binding upon him?

Ans- In those cases in which the Governor considered himself sufficiently informed. In no case was the expt binding upon him, because the Governor might ask for it or not as he pleased.

Q- Did the Governor ever insert the pt condition contained

1 — in this grant when he intended to grant full property or the ownership of the land?

CASE NO. 1 ND
PAGE NO 107

Ans — Some Governors inserted the condition notwithstanding they intended to give the property with the land, but others suppressed the condition.

Q — Who made the sketch contained in the plan certified by you?

Ans — Don Antonio Pici, before mentioned, made the plan.

Quest — Was it founded upon a survey?

Ans — It was not founded upon a survey, it is a mere sketch.

Q — At whose request was the sketch made?

Ans — My own request.

Q — Why did you seek for a sketch of the land after you had sold it?

Ans — Because Col Freemont requested me to have the sketch made and sent to him.

Q — Did he give you any reason why he wanted the sketch.

A — No, he gave me no reason.—

Q — State where the sketch

was made?

Ans- I believe it was made in San José.

Q- Why was the writing contained upon two sheets in the expediente numbered 6 & 7 written upon common paper instead of sealed paper?

Ans- The original was written upon stamped paper, but these were office copies for which stamped paper was not required.

Q- Are these not the originals?

A- No, they are copies.

Q- What was done with the originals?

A- The original of the grant went into my hands; the other paper is retained in the office. I do not know why the Secretary left it without the signature of the Governor. The copy of the decree contained on page 6 was usually signed by the Governor, why it was not in this case I do not know.

Q- How many times did the Assembly meet after the date of this grant?

Ans- I believe they had only one sitting after the date of this grant.-

Q- Was any effort made

by you to obtain the approval of the Assembly before the change of the sovereignty?

Ans— I made no effort to obtain the approval of the Departmental Assembly.—

Q— Was it not the duty of the Magistrate who gave judicial possession to determine the locality of the land?

Ans— The party presented his title to the Judge and pointed out the place where he wanted it.

Q— Did you ever do anything in reference to taking possession and occupying the land?

Ans— I never took possession of any land and made no effort to do so.

/Signed/ Juan B. Alvarado.

August 11th 1852.
Subscribed & Sworn to
Before me

/Signed/ James Nelson
Com'r—

Filed in Office August 11th 1852.

/Signed/ Geo. Fisher
Secty—

CASE NO. 1 ND
PAGE NO 109

110.2 /
CASE NO. 1 ND
PAGE NO. 110

Sello Primero Ocho Pesos
Habilitado provisionalmente por la
Aduana Marítima del Puerto de
Monterey, en el Departamento de
las Californias, para los años de
mil ochocientos cuarenta y cuatro
y mil ochocientos cuarenta y cinco.
Michelltorena Pablo de la Guerra

Sello

El Ciudadano Manuel
Michelltorena General de Bri=
gada del Exercito Mexicano Ay=
udante Gral de la Plana Mayor
del mismo, Gobernador Comand.te
Gral é Inspector del Departamento
de Californias. —

Por cuanto Dn Juan Bta
Alvarado, Coronel de la Milicia
ausiliar de este Departamento se ha
hecho acreedor por sus patrioticos
servicios para que se le atienda de
preferencia á la pretencion que
hace para su beneficio personal
y el de su familia del terreno
conocido con el nombre de las
Mariposas, en estencion de diez
sitios de ganado mayor en todos
terminos de la Sierra Nevada y
los Rios conocidos con el nombre
de Stanchilas, de la Merced, y
Sn Joaquin; practicadas primeram.te
las diligencias y averiguaciones

concurrientes segun lo dispuesto por
leyes y reglamentos, usando de las
facultades que me son conferidas
á nombre de la Nacion Mexicana
he venido en concederle el terreno
mencionado declarandole la propie=
dad de él por las presentes letras
sugetandose á la aprobacion de la
Exma Asamblea Departamental
y á las condiciones siguientes:

1ª No podrá venderlo, em=
pearlo, ni hipotecarlo; imponer
censo, vinculo ni otro gravamen
alguno.

2ª Podrá cercarlo sin
perjudicar las travesias caminos
y servidumbres; lo disfrutará libre
y exclusivamente, destinandolo al
uso ó cultivo que mas le acomode,
pero dentro de un año fabricará
casa y estará habitada.—

3ª Solicitará del
Juez respectivo que le dé posesion
judicial en virtud de este Despa=
cho por el cual se demarcarán los
linderos en cuyos límites pondrá
las mojoneras correspondientes.

4ª El terreno de que
se hace donacion es de diez sitios de
ganado mayor como se dijo referido.
El Juez que dé la posesion lo
hará medir conforme á ordenanza
quedando el sobrante que resulte
á la Nacion para los usos comuni=

112.a2

CASE NO. 1 ND
PAGE NO. 112

convenientes.

5ª Si contravinière á estas condiciones perderá su derecho al terreno y será denunciable por otro.

En consecuencia mando que teniendose por firme y valedero el presente se tome razón de él en el libro respectivo entregandosele al interesado para su resguardo y demas fines. Dado en Monterey á las veinte y nueve Días del mes de Febrero del año de mil ochocientos cuarenta y cuatro.

/ Firmado / Manl Michelta

/ Firmado / Manl Jimeno.
Srio.—

Queda tomada razon de este despacho en el libro respectivo á fojas 6. y ta

/ Firmado / Jimeno,

Filed in Office August 11th 1852

/ Signed / Geo. Fisher
Secty—

113. b 1

CASE NO. 1 ND
PAGE NO. 113

/ Translation /

The Citizen Manuel Micheltorena, Brigadier General of the Mexican Army, Lieutenant General of the Staff of the same, Governor & Commandant General & Inspector of the Department of Californias.

Whereas Don Juan B. Alvarado, Colonel of the auxiliary militia of this Department, has deserved well for his services, to the country, in such manner as entitles him to be preferred in the claim which he makes for his personal benefit and that of his family, for the tract of land known by the name of the Mariposas, in the extent of four leagues, (sitios de ganado mayor - ranges for large cattle) between the boundaries of the Sierra Nevada and the Rivers known by the names of the Chauchilas, la Merced & San Joaquin; having first taken the proper steps & information according to what is required by the laws & regulations, using the powers which are conferred on me, I have proceeded in the name of the Mexican Nation to concede to him the said land, declaring it to be his property by these present letters, subject to the approbation of the Most Excellent Departmental Assembly, and to the following conditions:

CASE NO. 1 ND
PAGE NO. 114

1st He cannot sell it, transfer it, nor hypothecate it, nor impose any annuity, entail or other burden upon it.

2d He may enclose it without prejudice to roads, paths & servitudes and enjoy it freely & exclusively, appropriating it to the use or cultivation that may best suit him; but within one year must build a house and it must be inhabited.

3d He shall apply to the proper magistrate to give him juridical possession in virtue of these proceedings or decree by which the boundaries shall be demarked, putting at their limits the proper land marks.

4th The tract of which donation is made, is of ten titles, as already stated. The Magistrate who shall give him possession, shall cause it to be measured, according to the Ordinance, the surplus remaining to the use of the Nation.

5th If he shall violate these conditions he shall lose his right to the land, and it may be denounced by another.

Therefore, I order that this present being held for firm & valid, account shall be taken of it in the

115. & 2 proper book, this being delivered to the interested party for his security & other ends. Given at Mauritius, this 29th February 1844.

CASE NO. 1 ND
PAGE NO. 115

/Signed/ Mark Michell Jr.

/Signed/ Mark Simeno.
Secretary.—

Account is taken of this Decree in the proper book at folii 6 and over.—

/Signed/ Simeno.

A correct Copy & Translation.

/Signed/ J. B. Carr.

Filed in Office 21st May 1852.

/Signed/ J. B. Carr
Secty.—

CASE NO. 1 ND
PAGE NO. 116

116

En el Puerto de Monterey de la Alta California, á los Diez Dias del mes de Febrero de año de mil ochocientos cuarenta y siete, ante mi Walter Colton, Juez de Paz de esta demarcacion, y ante los testigos que subscriben, compareció Don Juan Bautista Alvarado y dijo: Que por sí y á nombre de su esposa Dª Martina Castro de Alvarado, y demas herederos y sucesores y de quien de ellos hubiere titulo, voz y causa en cualquiera manera, vende y da en venta pública y enagenacion perpetua, por juro de heredad y para siempre jamas á Don Juan C. Fremont un terreno que le pertenece en propiedad, por concesion que de él le hizo el Escmo Sor Comandte General y Gobernador del Departamento Don Manuel Michel Torena, con fecha veinte y nueve de Febrero de mil ochocientos cuarenta y cuatro. Dicho terreno se llama "Las Mariposas," tiene de estension diez sitios de ganado mayor, y está situado entre los terminos de la Sierra Nevada y los Rios conocidos con el nombre de Chauchillas, de la Merced y San Joaquin. Declara el vendedor no tenerlo empeñado ni empeñado y que esta libre de todo

CASE NO. 1 ND
PAGE NO. 117

gravamen público, y como tal se lo vende al comprador en el precio de tres mil pesos ($3000 p/) que tiene recibidos á su entera satisfacción que desde ahora se desprende y aparta del dominio, propiedad y otro cualquiera derecho que le asista al referido terreno, renunciando lo y transfiriendolo en el comprador para que disponga de él como de cosa propia; obligandose el otorgante á que esta venta le será cierta, segura y efectiva, y que no le inquietará ni moverá pleyto ninguno y que en todo caso, si resultare algun reclamo queda obligado á resarcirle al comprador todos los daños y perjuicios que se le ocasionen. A cuyo efecto pasa con esta ésta al comprador el referido título de concesion y á la observancia de todo lo dicho obliga todos sus bienes presentes y futuros y con ellos se somete al fuero y jurisdiccion de los Señores Jueces, que de sus causas deban conocer para que á su cumplimiento le compelan y apremien como por sentencia definitiva, consentida y pasada en autoridad de cosa juzgada, que por tal la acepta, renunciando las leyes que en el caso le favorezcan.

Y para que conste lo firmó conmigo y los dos testigos que subscriben. —

118. 2 /Firmado/ Juan Bautista Alvarado

(Sello)

/Firmado/ Walter Colton
Chief Magistrate

Testigo
/Firmado/ Guillo. Edo. Hartnell

Testigo
/Firmado/ Guillermo. E. Garner.

En dicho dia, mes y año, comparecio igualmente ante mi y los ya mencionados testigos, Doña Martina Castro de Alvarado, esposa de D. Juan Bautista Alvarado y dijo: Que en nombre suyo y de sus herederos y sucesores y de quien de ellos hubiese titulo, voz y fama en cualquiera manera, da por bien vendido el parage ante-mencionado, y que renuncia espontanea y voluntariamente todo derecho que á él pudiera tener ella y sus dhos herederos.

/Firmado/ Martina Castro de Alvarado.

/Firmado/ Walter Colton
Chief Magistrate of
Monterey.—

Testigo.
/Firmado/ Guillermo. E. Garner,

Testigo—
/Firmado/ Guillo. Edo. Hartnell,

The foregoing Document was signed, sealed & delivered in my office and before me, this tenth day of January, One thousand Eight Hundred & forty seven.

/Signed/ Walter Colton
Chief Magistrate
of Monterey.—

/Signed/
William R. Garner
Secretary.—

Filed in Office August 11th 1852.

/Signed/ Geo. Fisher.
Secty—

120.

CASE NO. 1 ND
PAGE NO. 120

(Translation)

In the port of Monterey of Upper California on the tenth Day of the month of February in the year of One Thousand eight hundred & forty seven, before me Walter Colton, Justice of the Peace of this demarcation, and before the subscribing witnesses, appeared Don Juan B.ta Alvarado and says: That for himself and in the name of his wife D.a Martina Castro de Alvarado and other heirs & successors, and whoever of them shall have title, voice & repute in whatever manner, he sells & conveys in public sale & perpetual alienation, by right of inheritance forever and ever to Don John C. Fremont, a tract which belongs to him in ownership, by concession made to him by the Most Excellent Senor Commandant General & Governor of the Department Don Manuel Micheltorena with date 29th May 1844. Said tract is called "Las Mariposas" it has an extent of ten sitios of ganado mayor and is situated between the limits of the Sierra Nevada & the Rivers known by the name of Chaucilas, de la Merced and San Joaquin. The vendor declares that he has not alienated nor en-

burdened it, and that it is free from
every public burden, and as such
he sells it to the purchaser in the
price of three thousand dollars
($3000) which he has received to his
entire satisfaction; that hence forth
he may use it & dispose of the dom-
inion, ownership & other whatever
right may aid him in the deed trans-
ferencing it & transferring it to
the purchaser, that he may dis-
pose of it, as of his own thing; the
vendor obligating himself that
this said shall be certain, secure
& effective to him, (the vendee) and
that he will not disturb him, or
institute a law suit against him,
& that in all cases if there shall
be any claim set up, he will be
bound to indemnify the purchaser
for all the damages & prejudices
which may have been occasioned
to him. To which effect, he transfers
on this date to the purchaser, the
said title of concession, and to the ob-
servances of all the foregoing he
obligated all his property present
& future, and with them he submits
himself to the Laws & to the Juris-
diction of the Judges who may
have cognizance of this cause, in
order to compel him to its ful-
filment, and oblige him, as if by
final judgement, admitted & passed

in authority of a thing adjudged, renouncing the laws which might favor him in the premises. —

/Signed/ Juan B. Alvarado
/Signed/ (Seal)
Walter Colton.
Chief Magistrate. —

Witness
Wm Ed. Hartnell —
Witness
Wm. R. Garner.

On said day month & year, appeared also before me & the said Witnesses, Da Martina Castro de Alvarado, wife of Don Juan Bta. Alvarado & said: That in her name & those of her heirs & successors, and of whoever of them shall have title, voice & repute, in whatever manner, she gives for well sold the before mentioned place, and that she spontaneously & voluntarily renounces all right which she & her said heirs may have to it.

/Signed/ Martina Castro de Alvarado

"Witness"
Walter Colton Wm. R. Garner,
Chief Magistrate of Monterey "Witness"
Wm Ed. Hartnell.

Office of California Land Commission.

Los Angeles Sept. 27th 1852.

I certify the foregoing to be a true & correct Translation of the Original on file in this office, in Case No. 1.—

(Signed) Geo. Fisher
Secty—

Filed in Office Sept. 18th 1852.

(Signed) Geo. Fisher
Secty—

124. 2

CASE NO. 1 ND
PAGE NO. 124

Office of the Board of
Commissioners on Cali-
fornia Land Claims.
San Francisco Augt 11th 1852.

On this day before me James
Wilson one of the Commissioners for as-
certaining & settling private Land
Claims in the State of California,
came Antonio Maria Pico, a witness
produced in behalf of the Claim-
ant John C. Fremont whose
petition is #1 on the Docket of
this Board & was duly sworn.

The Law Agent of the U.S.
was notified & attended.—

Antonio M. Pico being duly
sworn in answer to interrogatories
by Claimant deposes & says, as
follows:

I am a native and have
always lived in California. I am
42 years old. I was first Alcalde of
San José; I held that office in 1844,
45 & 46.— I was acquainted with
the laws & customs of the Mexican
Government as to granting public lands in
California. I know of many grants
of public lands & have been concer-
ned in them officially. Lands were
granted by the Mexican Government

as well for purposes of colonization as also by way of reward for public services. The form of the grant was substantially the same in both cases, but in the case of public services rendered the applicant had preference. It was competent for the Mexican Government to grant lands without a diseño or plan being exhibited with the petition when it was impracticable to make a plan owing to the land being situated in a desert country; in which case the Government referred it to the Alcalde to report whether the land could be granted & if he reported favorably the Government could grant without the diseño being exhibited directing the plan to be afterwards exhibited. A plan subsequently produced in conformity with the grant would have the effect, as if annexed to the petition in the 1st instance in such case. I know the land called "Las Mariposas" granted by Gov.r Micheltorena to John B. Alvarado; first knew the land in 1825 — at the time the land was granted to Alvarado it was impossible to take a sketch, owing to the hostile Indians. The land obtained in that condition till after the occupation of California by the Americans Until 1849 I had been on the land granted to Alvarado before the grant. after the grant

in 1844, there was no regular session of the Departmental Assembly, which met only a short time at Los Angeles, and the country being in trouble, parties did not present their titles for confirmation. I never knew a title in California deemed invalid for want of the approval of the Departmental Assembly. It was always deemed valid from the time it emanated from the Governor. Where a grant was made by the Governor of certain quantity of land within specified limits & those limits included a larger quantity of land the grantee had the right to select the quantity granted to him any where within those limits, and to require possession according to. When a party applied for land & presented a diseño, the usage was to make a more figurative sketch, representing the land asked for but without any actual measurement, there being no surveyors in the country. I never knew an instance in which an actual measurement of the land asked for was made before the issuing of the title in full property. The title was considered complete when it emanated from the Governor and the survey was made afterwards, but no further or other title issued; the possession was given in accordance with

the title previously issued. The first condition in the grant against selling or changing the land granted has no effect in law, and was merely inserted to prevent the grantee from selling to foreigners but the condition was without effect. I have known sales by grantees notwithstanding such condition sanctioned by the Government; the grantee has the right to sell without the sanction of the Government notwithstanding the condition; there is no instance in which a sale has been held invalid on account of such condition. The petition of Alvarado for the land called "Las Mariposas" was referred to me as first Alcalde of the District of San José by the Governor for my report; the object of the reference was to ascertain whether the land could be granted that is whether it was vacant or belong to any town, corporation or individual, it was my duty on such reference to ascertain & report whether the facts stated in the petition were true. I did report upon the petition in favor of the grant being made. The Governor of California at the time of the grant was Manuel Micheltorena, Manuel Jimeno was Secretary of the Department. I know the signatures of Micheltorena and Manuel Jimeno.

In 1849, Alvarado requested me to make a diseño of the land granted to him by Micheltorena and I did so with the assistance of William Gulnack, an old resident in the country, well acquainted with the land, he drew up the sketch under my superintendance & approved it from my own knowledge of the land. I sent the diseño to Mr Fremont by the desire of Alvarado. The sketch or diseño represents the land granted by Michel Torena to Alvarado known by the name of "Las Mariposas". I first knew Col Fremont in 1845. I believe that in 1849 Col Fremont took possession of the land. I cannot remember the date. The grant to Alvarado was made in the form that was usual where land was granted in full property. The original petition being now produced from the archives with the order of reference & the report of witnesses thereon, which I recognise the same and that it was made at the time it bears date, & further says that the signatures of Michel Torena and of Jimeno & his own thereon are genuine. The diseño made by me & Gulnack being also produced I recognise it as an exact copy of said diseño.

CASE NO. 1 ND
PAGE NO. 129

Cop. Interrogatories by the
U. S. Law Agent. —

In answer to cross interrogatories by the Law Agent said witness Deposes & says:

Grants were made for public services civil & military, of lands in any place where the Government thought proper. I know of no written law, authorizing the grant of lands without the Diseño but the Governor did grant notwithstanding the regulations of 1828 without a Diseño where one could not be made. The right of the grantee to elect within the limits of his grant grew out of the custom of the country then it was refer to the Alcalde to measure the land and he & the party settled it, and the Government did not interfere. I have known sales notwithstanding the 5th condition in the grant to against selling or changing in instances which took place in my office as Alcalde in San José in the cases Domingo Peralta and Mariano Castro. Castro applied to the Governor and the Governor authorized him to sell. I have seen the permission in writing. He made the sketch from our knowledge of the land without any actual sur-

130. 2

Survey. Shown from Col Fremont that he has put up buildings and put cattle on the land.

[Signed] Antonio M.a Pico.

August 14th 1852.
Subscribed & Sworn to
Before me
[Signed] James Wilson
Com.r

Filed in Office August 14th 1852

[Signed] Geo: Fisher
Secty

131. 3

CASE NO. 1 ND
PAGE NO. 131

Off 1—

Office of the Board of
Commissioners of Cali-
fornia Land Claims.
Los Angeles Sept 15th 1852.

At this day before Samuel Wilson
one of the Commissioners for ascer-
taining & settling private Land Claims
in California, came George W. Wright,
a witness produced on behalf of the
Claimant & was duly sworn, his evi-
dence being given in the English &c

The following Deposition taken
at the request of Lieut. C. Fremont
to be used in the above case.—

Geo. W. Cooley Esqr Law Agent
of U. S. was present & did not object.

Witness says:

His name is Geo. W. Wright, age
36 years, residence at San Francisco, well
acquainted with Col Fremont Claim-
ant in this Case & knows the tract of
land called "Las Mariposas" claimed
by said Fremont, & was once lessee under
said Fremont, which said lease, he said
Wright, assigned about a year ago, & has
now no interest whatever in said Land.
Said Wright was on said Tract in the
Summer of 1849 & had a Company at work
mining & getting out the rock, encamped
with the company, & knows the fact

that said Company, from a connexion with their said man, were holding possession of said Tract under the authority of said Fremont, & acknowledging his authority over & ownership of said Tract. Said Wright has subsequently been in a number of buildings on said Tract, owned by said Fremont, of which one is now occupied as a dwelling by Bradford Jones, as resident Agent of said Fremont, & another is & has been for a long time occupied by Edward S. Stone, as a Farm House, & having charge of cattle belonging to said Fremont on said Tract, & knows that said Fremont has made extensive improvements on said Tract, among which said improvements is a large corral. Said Wright has been done of the monuments of a survey made of said Tract by a Mr. Preuss in 1849, & also a map of said survey as early as 1849 - On looking at the map, now produced from the Surveyor Generals Office witness says that it represents the said Tract called "Las Mariposas," & appears to correspond in the general outlines with the map of said Tract made by said Preuss as aforesaid. Said Wright knows that said Tract is more than Ten Leagues from the Sea-Coast -

In answer to Interroga-

133. 3 2

CASE NO. 1 ND
PAGE NO. 133

Interrogatories propounded by Geo. W. Cobley U. S. Law Agent.

Witness says: that he has no interest present or contingent in the result of the case, & that he has no interest in the land claimed & no expectation or advantage from a favorable result of the case, but that he hopes said Fremont will gain this case.

Witness further states that he became Lessee under said Fremont in 1850, of six hundred feet; that he, said Wright first saw & was in buildings erected on said tract in the summer of 1851; that said buildings were a Machine shop, his family private dwelling built in 1850, the building at present occupied by his Agent, & the Farm House now occupied by Mr. Stearns all within the tract now claimed by said Fremont; that he knows there are extensive mines of Gold within the limits of said claim.

/Signed/ G. W. Wright.

Feb. 13th 1852.

Subscribed & sworn to

Before me

/Signed/ Sam. Wilson

Com.

134.

Filed in Office Sept. 12th 1852.

/Signed/ Geo. Fisher
Secty —

CASE NO. 1 ND
PAGE NO. 134

No 1.

Office of the Board of California Land Commissrs
Los Angeles Sept 13th 1852.

On this day before James Wilson, one of the Commissioners for ascertaining & settling the private Land Claims in the State of California, came Wm Carey Jones, a witness produced in behalf of the claimant, John Charles Fremont, whose petition is No 1 on the Docket of the Board & was duly sworn, his evidence being given in the English tongue &c —

The following Deposition taken at the request of John. C. Fremont, to be used in his case aforesaid. Geo. W. Cooley Esqr Law Agent was present and did not object. —

Witness says:

His name is Wm Carey Jones, aged 36 years resides in the State of California, is intimately acquainted with John. C. Fremont, claimant in this case. He acted as his counsel in a trial before a Court Martial in Washington City in Dec. 1847 & January & February 1848. Said Fremont was arraigned on charges preferred by Brigadier General Kearny. He (said Jones) has seen the original order of arrest, signed by said General Kearney. Said

Fremont was brought from California to Washington City, under orders from Genl Kearney & put under arrest he believes at Fort Leavenworth & thence ordered to Washington City. Said Fremont was detained in consequence of his trial, & waiting for the acceptance of his resignation subject to military orders until some time in August 1848. Said Fremont then left Washington City with the avowed purpose of coming to California to take possession of his Mariposa Estate, purchased from Gov. Alvarado - Said Jones & Fremont lived in the same house together in the City of Washington during the time of his trial & detention there, when he, said Fremont, was in the habit of consulting with me in regard to his interests in California as well as other things, & constantly avowed his intention of proceeding to California, as soon as he was at liberty, to take possession of his property there. Said Fremont left Washington City with the intention of going to California by the over-land route, & previous to leaving Washington City, he engaged, to my knowledge, four or five men to go with him. Said Jones knows that he proceeded by said route from the fact of having received letters from him written by him whilst on his said over-land journey, & learned

137. 4

from letters received from him, that he, said Fremont engaged additional men at St Louis to accompany him. Said Jones understood from letters received from said Fremont, from common report that about one half of the number of his party were frozen in the Mountains & never reached their destination. Said Jones understood that the survivors reached California in the month of May 1849 — He first knew several members of the party in California in September 1849, on his first arrival in California. He there met with Col Fremont & Mr Preuss, whom he knew to have left Washington City with said Fremont for the said expedition to California. Said Preuss was, by occupation a Surveyor & Draftsman & had accompanied said Fremont on several previous expeditions, in the employment of the Topographical Department of the Government. When said Jones was in Monterey in September & beginning of October 1849, said Preuss exhibited to me, on several occasions, a map which he had made of the Mariposas Tract, which map purported to be made from actual survey on the ground. Said Jones knows that said Fremont has always claimed ownership of the Tract — Said had agents & workmen & made leases of different parts of the land. Said Jones returned from Cali-

CASE NO. 1 ND
PAGE NO. 138

California to Washington City in the beginning of 1850. Said Fremont arrived in Washington City as Senator elect from California soon after his, said Jones's arrival. He knew of his having executed leases to to Alpinwall & others, assignees of portions of said Tract, & of their having sent Agents & workmen, miners & Machinists for working the same, in April 1850. At the same time, said Fremont solicited said Jones to return to California for the purpose of attending to his interests in the State, & more particularly in that of the Mariposas. Said Jones did return, having that as one of the prominent objects of his return to California. Said Fremont sent with him, said Jones, a Mr. Heap to go upon the Tract as a resident Agent. Said Jones furnished said Heap, on his arrival in California, in June 1850 with money & supplies for the purpose of carrying out this object & dispatched said Heap to said Tract. He still continued to to supply said Heap, during the summer & fall of 1850 & caused him to build a house upon said Tract with enclosures & other improvements, furnishing him money, lumber &c & paying the bills of the workmen. He also employed Hungarian Gentlemen, Count Wass & two others to make a

139. 4 3

general reconnaissance of the whole of said Tract, & executed about the same time a lease for a portion of said Tract to Mr Gregory Yale & others. Said Fremont in the fall of 1850 sent out several Agents & instruments to me to be dispatched to said Tract who I furnished with means & dispatched accordingly, & from whom I received constant reports & communications whilst at said Tract. This Jones often received reports & communications from said Knapp also of his proceedings on said Tract, all which said Jones did as Agent of said Fremont in the premises. said Jones says he has no interest in the result of the case, he expects a fee, but not necessarily dependant upon the result of the case, there being no stipulated fee, but such as legal claims upon said Fremont, as may result from being employed in the premises; that he has no stipulation or agreement whatever on the subject.

Questions by G. W. Cooley U S Law Agent.

In answer says:

In answer said Jones recollects the names of Mr Peugh & Mr Ducatel of Baltimore, as among the persons engaged by said Fremont

at Washington City. Mr Beale is now residing in Washington City & that Mr Ducatel returned to the Atlantic States his residence not known. That Mr Beale left California in the spring of 1850, & Mr Ducatel in the spring of the present year 1852. Said Jones recollects the names of Alexander Godey & Vincent Haler, as among those engaged by said Fremont in Missouri; that on reflection he recollects that the persons last named, were engaged by said Fremont in Washington City to meet him at St Louis, on the Frontier, said persons having been with him on previous expeditions, & were with him at the Court Martial. Said Jones believes that these said last named persons are now in California & probably in the region of the said Mariposa Estate. Said Jones does not state said Fremont was born, but has heard him speak of himself as a South Carolinian; that ever since he, said Jones, was acquainted with him, he said Fremont was in the Army of the United States, that he believes he was at an early age Teacher of Mathematics in the Navy, employed in United States Vessels of War in distant expeditions; that he was employed by the Government in the expeditions of Monsieur Nicolet in exploring the upper Mississippi; that

he, said Fremont entered the Army whilst Joel Poinsett was Secretary of War; that he first became acquainted with said Fremont & family in Washington City in 1842; that he, said Jones, believes that said Fremont first came to California as an officer of the United States in the Topographical Department, & continued in this Department until appointed Lieut Col of Dragoons in the service of the United States, in which service he continued till the Summer of 1848; that he never was a citizen of the Mexican Republic to his said Jones knowledge; that he, said Jones, believes that Fremont's survey embraces the land intended to be covered by the claim of said Fremont; that he, said Jones, employed Edward Watts in the Summer of 1850; that he said Jones, has never been on said tract - that he has repeatedly heard said Fremont say that there were extensive mines of gold on said tract now claimed by Col Fremont; that he said Jones, first heard from said Fremont in the fall of 1849 that Gold had been discovered upon said tract & subsequently that it was supposed there were extensive mines on said tract.

Question. —

Have you ever heard any one say whether there was any other place within the general limits of this Grant called by the name of the Las Mariposas?

Answer —

Witness has heard that there was a creek south of the limits of the Tract claimed, within the general limits of the grant, which had been called the Mariposas; that this is simply a general recollection & that he cannot identify the time or persons. that in the year of 1850 & 51 he heard such report, but not from persons, or under circumstances calculated to make any impression on his mind — that he never heard such report from said Fremont, nor from Alvarado — that he has made enquiries from old inhabitants of the Country who have said that they have known of no other Place by that name. —

(Signed) Wm Carey Jones

Sept. 18th 1852

Subscribed & Sworn to
Before me.
(Signed) James Wilson
Com.r

Filed in Office Sept. 13th 52.
(Signed) Geo. Fisher Secty —

CASE NO. 1 ND
PAGE NO. 143
143.

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 70 ~ pages, numbered from 1 to 70, both inclusive, to contain a true, correct, and full Transcript from the Journal of Proceedings of the said Board, in Case No. 1, John Charles Frémont, claimant, against The United States, for the place named Las Mariposas. I further certify the foregoing 72 ~ pages, numbered from 71 ~ to 142 ~ both inclusive, to contain a true, correct, and full copy of the original depositions of witnesses, and of the documentary evidence on file in this office, in the same case.

In testimony whereof, I hereunto set my hand, and affix my private seal, not having a seal of office, at San Francisco, California, this thirtieth day of May, A.D., 1853, and of the Independence of the United States of America, the seventy seventh.

Geo. Fisher.

Secy.

CASE NO. 1 ND
PAGE NO. 145

Attorney Generals Office
Washington D C 18th August 1853

John C. Fremont, Claimant,

v.

United States.

You will please take notice that the appeal in the above case from the decision of the Commissioners to ascertain and settle private land claims in the State of California, to the District Court of the United States for the Northern District of California will be prosecuted by the United States.

Clarkson

Attorney General U. S.

CASE NO. 1 ND
PAGE NO. 146

1

John C Fremont
Claimant
ag
The United States

Filed Sept. 20th. 53
Lewis Monroe
Clk.

Notice of appeal
by U. S.

CASE NO. 1 ND.

SL RO.1 ND
PAGE NO.
CASE NO.1 ND
PAGE NO. 147

United States District Court, for the Northern District of California

United States, appellants

vs.

John Charles Fremont

appellee

John Charles Fremont, by his attorneys, makes this his amended motion, and moves the Court that the appeal herein be dismissed for these reasons:

II. That said appeal has not been brought or perfected according to law, in this:

1. That the act of Congress, approved 3d March, 1851, entitled "an Act to ascertain and settle the private land claims in California" provides a time and mode in which the decisions of the Commission by said act created may be reviewed; the provisions of which act were duly accepted by the claimant, said John Charles Fremont, by the presentation, and subsequent prosecution of his claim before the said Commission, whereby he became entitled to all the benefits of said act of Congress, and that the decision of said Commission in his favor should be a final confirmation of his said claim, unless proceedings for a review of the same were commenced and prosecuted in the time and manner prescribed by said act; and such proceedings have not

been so commenced, and the time within which they might have been taken has elapsed. —

2. That in particulars not altered or proposed to have been altered by any subsequent act of Congress, said appeal has not been brought or perfected according to, and the proceedings herein are not in conformity with the provisions of said act of 3rd March, 1851, or with law. —

3. That this appeal is in derogation of the rights of the claimant, secured to him by the treaty between the United States and Mexico, commonly called the treaty of Guadalupe Hidalgo, and proceedings thereunder. —

4. That it is in derogation of his rights under a compact with the United States existing by virtue of said treaty, the said act of 3rd March 1851, enacted to carry into execution the said treaty, and the claimant's acceptance of the terms of said act. —

5. That by operation of law, and the stipulations of said act of 3rd March, 1851, the decision of said commission in this case has become final, in favor of said claimant, and is not open to review or appeal. —

II. That this Court has not jurisdiction of said appeal. Because:

1. In order to any jurisdiction over or cognizance of, the proceedings or decisions of said commission, it is required that a petition

be presented to the Court, and a copy thereof served on the adverse party, praying said Court to review the decision of said Commission, and the same has not been done, and the time, within which it might have been done, has elapsed.

2. That there are no provisions lawfully established by which the decision of said commission in this case can be brought within the jurisdiction of this Court, or to prevent the ripening of the same into a decree of final confirmation, other than those set forth in said act of 3rd March, 1851; and said provisions have not been complied with.

3. That the appeal has not been preceded, brought or perfected by due process.

4. That there are no provisions of law by which an appeal will lie from the decision of said Commission herein.

5. That this Court has no appellate jurisdiction over the subject-matter of this appeal, nor are the parties properly brought before it.

6. That the said Commission is not a Court established under the 1st and 2nd Sections of the 3d Article of the Constitution of the United States, the tenure of office of said Commissioners not being that of good behaviour, but at the will of the President of the United States, and their jurisdiction special; and that the claimant has not consented to have his rights tried or heard other than by due

course of law, and the constitutional tribunals of the country, except by his acceptance of the terms of said act of 3d March, 1851; and this appeal is not brought or prosecuted in accordance with said act, or his said consent; and he now protests against, and does not consent to the imposition of any new terms, or that this court shall take jurisdiction of any appeal herein.

7. That the said act of 3d March 1851, is not a law enacted by Congress, in its legislative or law-giving capacity, but is in the nature of a proposal made under its administrative and fiduciary powers, as custodian and agent for the disposition of the lands and other property of the United States, according to the 4th article of the Constitution; the acceptance of which proposal by this claimant made the same a contract, in no respect differing from a like contract between individuals, and not to be varied or departed from by either without the consent of the other; and this appeal is not brought according to the terms of said proposition and contract; and this claimant, being one of the parties thereto, has not consented and now protests against, and does not consent to any variance of or departure from the same, nor to this Court taking jurisdiction of this appeal.

8. That

the said Commission is not a part of the Judiciary of the United States, or established by Congress in its legislative or law-giving capacity or by the Government of the United States in its political or governmental capacity; but is a special tribunal, established in pursuance of the administrative and fiduciary powers of Congress, as custodian and agent of the lands and other property of the United States, and has no jurisdiction, and consequently no appeals or other process can lie from, except by consent; and no consent, express or implied, has been given to this appeal.—

9. That this Court cannot have appellate jurisdiction from a tribunal constituted otherwise than according to sections 1st and 2d of article 3d of the Constitution, unless by consent, and such consent is not given in this case.—

10. That this Court has no appellate jurisdiction under the Constitution and laws of the United States.—

Wherefore said claimant prays that said appeal be dismissed, and that a decree or order of final confirmation of his said claim, with an order of survey of the same, be made, according to the provisions of the said act approved 3d March, 1851.— By his Attorneys

Jones & Strode,

Survivors of Jones, Tompkins & Strode.

CASE NO. 1 ND
PAGE NO. 152

U. S. District Court
for the Northern Dist.

Unites States, appellant,

vs.

John Charles Fremont } appellee

Amended motion
to dismiss the appeal

Filed Sept. 30 1853
John A Moore
Clerk

Jones & Strode
Survivors of Jones Tompkins & Strode
attys for appellee

CASE NO. 1-ND.

United States District Court of the Northern District.

CASE NO. 1 ND
PAGE NO. 153

United States.
vs.
John C. Frémont

And the said John C. Frémont, by his attorneys, protesting that the said John C. Frémont is not properly brought before this Court, and that no jurisdiction thereof can be had or taken, moves that the attempted appeal be dismissed, for the following additional reasons.

1. That it does not appear, is not averred, nor proven. that the claim claimed by said John C. Frémont is within the territorial jurisdiction of this Court, and that in fact it is not.

2. That the facts necessary to bring this case within the jurisdiction of this Court are neither averred nor proven, and in fact do not exist.

3. That there is neither process, notice or consent bringing this case before this Court, or to make it necessary for said John C. Frémont to appear or defend in the present proceedings.

4. That this proceeding is unauthorized by and contrary to law, and in violation of the rights of said John C. Frémont.

E.S. 98 KD

5. That it does not appear, is ~~not~~ not averred, nor otherwise shown, that notice has been given according to ~~this~~ act of Congress of 30 August 1852, of the intention of the United States to prosecute this (so called) appeal; and that ~~consequently, of the~~ in default of such showing, even were all other proceedings herein regular ~~and~~ in conformity with law, this Court cannot proceed.

6. That it does not appear, nor is averred or otherwise shown, that the attorney general of the United States has given notice of the intention of the United States to prosecute the appeal in this ~~case~~, within six months from the time of his receipt of the transcript of the proceedings of the Commission to ascertain and settle Private Land Claims in ~~California~~; and without such showing, even were all other proceedings herein regular and according to law, this Court cannot proceed.

7. That the proceedings and decision of the said Commission, in the matter of the claim of said Fremont, are not certified or remitted to ~~this~~ Court, in pursuance of law, or in any manner to authorize this Court to take cognizance thereof, or to proceed herein.

By his attys,
Jones & Hoge,
Survivors of Jones, Griffin & Hoge

CASE NO. 1 ND
PAGE NO. 155

CASE NO. 1 ND.

FILE NO.

United States District Court
Northern District of California.

United States
vs.
John Charles Fremont

Motion to dismiss appeal.

Filed Oct. 26th 1853
John A Munroe
Clerk

Jones & Wood, for Deft

CASE NO. 1 ND
PAGE NO. 156

At a Special Term of the District Court of the United States of America, for the Northern District of California, held at the Court House in the City of SAN FRANCISCO, on Thursday the 27th day of October in the year of our Lord one thousand eight hundred and fifty-three

Present:

The Honorable OGDEN HOFFMAN, JR., *District Judge.*

The United States
Appellants
vs.
John C. Fremont
Appellee

On Motion of Counsel for Appellee Ordered that this Cause be postponed six weeks to allow the Appellee may have an opportunity to take further testimony

CASE NO. 1. ND.
PAGE NO.

CASE NO. 1" ND
PAGE NO. 157

U. S. Dist. Court

v 3

The United States

vs

John C. Fremont

Order of Postponement

Filed Oct. 27, 1853
Jno A Munn
Clerk

Oct. 27, 53

CASE NO. 1 ND
PAGE NO. 153

U. S. Comm[rs] Court

The United States
vs.
J. C. Fremont.

Land Claim No 1

Testimony de bene esse
by consent, Oct. 28, '53

Pearson B Reading, being called by appellee and sworn says
I am acquainted with J. C Fremont the
Appellee in this case. First saw him at Sutters
Fort in the Spring of the year 1844.

Question, Do you know of any settlement
or attempted settlement of the
tract called "Las Mariposas," in this
State by Col Fremont, if so when and
what was it?
Answer, At the close of the war
between The United States
and Mexico in June 1847 Col.
Fremont was ordered home by General
Kearney; at his Camp on Blue River he
gave me a Power of Attorney to act for
him relative to forming a Settlement
on that tract,
Willard Bryte was employed by him to
make a settlement on said tract and I
was authorized by my Power of Attorney
to furnish him means to purchase pro-
visions, tools necessary for building, ag-
ricultural implements, and whatever he
might require in making a Settlement.

I also delivered cattle & horses, to Bayle, from Wm. Shaddons Charge, who was then living on the Commines river, I also furnished him money on account of Col Fremont & did deliver the articles to him as before stated with instructions to him to go immediately upon the Mariposas Claim, I saw him leave for that Claim, but I have never been on that claim, He left about June 1847, took the cattle with him, He took his family with him,

Question ——— What do you know of his remaining upon the place or leaving it, the reasons of it, and from what sources of information?

Witness Answers, I know nothing except what Wm. Bayle told me,

Objection ——— (Any further testimony from that source, objected to by U. S. District Attorney)

CASE NO. 1 ND
PAGE NO. 153

Witness says. He afterwards informed me of his having gone upon the tract Mariposas, made improvements & that he took the stock delivered to him by me, on to the place, and was at that time, either late in the next fall 1847, or Spring of 1848, residing with his family upon the said tract, and from the hostilities of the Indians he felt great insecurity both of life & property.

Question. ——— Please State the pretended occupation of the county from the

Fall of 1844. to the close of the Year 1847
as to the security of settlers.

CASE NO. 1 ND
PAGE NO. 160

Answer, During the Fall of 1844 the
Californians revolted against
Genl. Michael Torrano. He met the
forces in force, & which in November 1844
near to the Pueblo of San Jose where they
capitulated shortly after Genl. Michael
Torrano withdrew his force at Monterey
the then Capital of the State, a correspon-
dence ensued between Genl. Michael Tor-
rano, and Capt Sutter agency of Capt
Sutter aid in his behalf to sustain him-
self against the revolting Californians
considerable excitement at that time pre-
vailed in the Sacramento Valley, and
the foreigners determined to espouse the
cause of Genl. Michael Torrano, and
collected at Sutters Fort, at the call of
Capt Sutter, in December 1844, Michael
Torrano was then Military & Civil Governor
of California, Castro was the leader of the
opposite forces. The results Capt Sutter
marched to the aid of Genl. Michael Torrano
and was defeated by the Revolutionists
at the field of Cahunga, in the Spring of
1845, Capitulated and was obliged
to leave the Country,
During the period of which I have spoken
we were in a constant state of turmoil and
confusion, conflicts of Arms, which caused
a feeling of insecurity among the foreigners
who kept mostly together, Sutters Fort
was our head quarters.

The Indian tribes became less peaceably inclined at first, the Northern Indians, ~~Mariposas~~ siding with Genl. Michaeltorena, were engaged in the battle of Cohanga, A constant spirit of jealousy and suspicion existed during the years ~~1844 1845 1846~~ from the battle of Cohunga until the Spring of 1846, altho' there was no actual fighting except with the Indian tribes, who during the periods of 1845 and 1846, were constantly committing depredations, murdering, thieving &c

CASE NO. 1 ND
PAGE NO. 161

The Revolution, named had a tendency to destroy the favorable control which had been exerted by Capt Sutter over a large extent of country inhabited by the Indians,

My remarks are chiefly to the Northern Indians; ~~in relating to the La Grayas & Mariposas District~~,

I was engaged in a fight with them in 1846, in which they used guns, that they had never before used, in their fights with the Americans,

I know from general report that the Mariposas, Stanislaus, and Merced Indians, were plundering, stealing horses, & committing murders, ~~they had~~ during the years, 1843. & 1847 — in the neighborhoods of San Jose, Santa Clara & the Spanish settlements generally,

---

Question: Do you think Gov Alvarado could have occupied the tract

CASE NO. 1 ND
PAGE NO. 162

known as the Mariposas, previous to 1847,

Answer, I think he would have needed
since then to sustain himself
then 15 or 20 men would have been
sufficient. they would have been required
to have been armed & equipped and to
do military duty, And should have
been good mounted men, & foreigners
of Mexicans I think he would have
needed 150, or 200 men,

Question, What was the extent of country
on which Genl. Sutter exerted
the influence of which you speak?

Answer, To the South as far as the Stanislaus river, I think not
further, and that it did not include
the Mariposas Indians, The latter having
always been committing depredations as
stated, since my first knowledge of
them,
The Indians generally throughout Cal-
ifornia, were ~~inclined to be~~ less
tractable and committed more depre-
dations after the Spring of 1844, and
became bolder in their hostilities.

Cross examined, by U. S. Dist. Attorney
Witness says,

Question. State who were the opposing
parties in the State revolution

of which you have spoken?

Answer. Gen. McCullough, headed the Government forces, and Gn. José Castro three of the revolutionists. Juan de Alvarado, the grantee of the Mariposas tract originally, belonged to the Castro party, which was victorious at Cahuengo, & remained in possession of the County after that battle, & was afterwards sustained and recognized by the Central Government of Mexico.

The general belief, with many of us, was that the General Government, acquiesced in the authority of Castro, from necessity.

In the Commencement of the Revolution up to the battle of Cahuenga, Genl. McCullough was sustained by troops from the Federal Government,

I do not know, of my own knowledge, that Juan de Alvarado, joined the forces of Castro, but as a matter of current history I do know it.

Objected to. (The last statement objected to by Counsel for Appellee)

J. B. Hardin

CASE NO. 1 ND
PAGE NO. 164

U. S. Comm. vs Office

The United States vs Land Claim No

J. C. Fremont. Testimony by Consent.

J. J. Warner, being sworn says. I have resided in California 22 years. I know the location of the tract called "Mariposas," was on it in the winter of 1832, & 1833. have crossed it twice.

Question. State from your knowledge of the political condition of the country from the Spring of 1844 to 1847, whether in your opinion it would have been for Gov. Alvarado to have resided on or occupied the Mariposas Grant?

Answer. I think it would have been impossible to have occupied it, unless assisted by a military force,

Question. State the effect of the civil war and the war between the United States & Mexico upon that section of the country?

Answer. A military post was established by Michael Evans in the year 1843 or early in 1844, upon the waters of the San Joaquin river, under the command of General José Castro the principal object of which was, to protect that section of the country from the

hostilities of the Indian tribes, to allow of its settlement & occupation under the Mexican Government, in consequence of the revolution to which resulted in that Post was broken up, in November or thereabouts, of 1844, for the possession of the civil war of 1844-5, Gen. Michaeltorena, brought into the field a large number of Indian allies, to act against the native Californians the consequence of which was, a most hostile state of feeling & action from the Indians towards the native Californians throughout the country, and as far as the part of the native Californians & the Indians

CASE NO. 1 ND
PAGE NO. 165

Question. State if you know any thing of the action & usages of the Governors of California in granting Authorities in case of grant of lands, for the settlement & occupation of lands in consequence of Indian hostilities?

Answer I know that it was customary so to do, & that the petition of "denouncers", was frequently refused on the showing, by previous grantees that they had been unable to occupy the Grant from the hostility of the Indians, and further time was granted them to occupy.

Cross Examination. by U. S. Dist. Attorney,

The Mariposas tract, as defined by limits did not make any more impression on my mind than other tracts. I knew the

CASE NO. 1 ND
PAGE NO. 166

Creek running through it called Mariposas

Question, How many leagues of land do you think, is contained in the tract called Las Mariposas, from your observation of it,

Answer, I have no idea whatever, when I saw there no tract of country being known as the Mariposas tract, I simply knew the stream called "Mariposas" about the foot of the mountain & a short distance down the plain, have never examined a Map of that tract, Was better acquainted with the Indians than the land, In '32 & '33 the Indians appeared friendly, but it would not then have been safe for a person to settle among them, in my opinion, was one a party of trappers I knew that a little lower down on the Calaveras river the Indians were at that time hostile. I think, there was not so much danger to be apprehended from open & declared hostility of the Indians as from sudden treachery & outbreaks.

Question, State some instance of "denunciation" "or" having failed to sustain their denouncements on the ground of Indian hostilities,

Answer, I don't know that I can identify any case specify any particular Cases at this time, but will recollect that during my residence in Los Angelos,

they did occur, and use of general knowledge.

Question. Can you specify a case in which the Governor of California ever extended the time of occupation on account of Indian hostilities.

Answer. I believe it was so extended in the case of the Rancho, San Felipe the extension was given, I think somewhere about 1842, by the authority, I think, of the Governor through the Prefect.

CASE NO. 1 ND
PAGE NO. 167

Question. Who was the Prefect

Answer. I do not recollect.

Question. Do you know of your own knowledge that the Prefect had any authority from the Governor.

Answer. I do not.

Question. Can you specify any other case of an extension?

Answer. I can not.

J. J. Warner

United States of America, } ss.
Northern District of California.

CASE NO. 1 ND
PAGE NO. 163

I, Henry B Danes a commissioner duly appointed by the District Court of the United States, for the Northern District of California, under and by virtue of the Acts of Congress, entitled "An Act for the more convenient taking of Affidavits and bail in civil causes, depending in the Courts of the United States," passed February 20th, 1812, and the Act of Congress, entitled "An Act, in addition to an Act, entitled 'An Act for the more convenient taking of affidavits and bail in civil causes, depending in the Courts of the United States," passed March 1st, 1817, and the Act entitled "An Act to establish the Judicial Courts of the United States," passed September 24th, 1789, **Do hereby Certify,** That the reason for taking the foregoing *deposition* is, and the fact is, the witness was material and necessary in the cause in the caption of the said depositions named, and that ~~he~~ the same was taken by consent of parties without affidavit and notice.

~~**I further Certify,** That notification of the time and place of taking the said *deposition* signed by me, was made out and served on the~~

~~to be present at the taking of the *deposition* and to put interrogatories, if he or they might think fit~~

I further Certify, That on the 28th day of October in the year of our Lord one thousand eight hundred and fifty three I was attended by Volney Howard Esq Counsel for Plaintiffs and by S W Inge Esq U.S. District Attorney and by the *witness* who was of sound mind and lawful age, and the *witness* was by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the *deposition* was by me reduced to writing, in the presence of the *witness* and from ~~their~~ statements and after carefully reading the same to the *witness* they subscribed the same in my presence. I have retained the said *depositions* in my possession for the purpose of returning the same with my own hand ~~to~~ the Court for which the same were taken.

And I do further Certify, That I am not of Counsel nor Attorney for either of the parties in the said *deposition* and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof, I have hereunto set my hand and seal, this 28th day of October in the year of our Lord one thousand eight hundred and fifty three and of the Independence of the United States the ~~seventy~~ eighth.

Henry B Danes
United States Commissioner, duly appointed by the District Court of the United States, for the Northern District of California.

CASE NO. 1 ND
PAGE NO. 169

Vol. No.

United States District Court,

For the Southern District of California

The United States

vs.

J. C. Fremont.

Inv. Deposition on the part of the Appellee taken before Henry I. B. Janes United States Commissioner, on the 28th day of October 1853 P. R. Reading and J. L. Warner

Filed the 28th day of Oct. 1853

John A. Wynne Clk

CASE NO. 1 ND.

CASE NO. 1 ND
PAGE NO. 170

U. S. Commissioners Office
Land Claim No 1.

The United States
vs
John C Fremont

Testimony by Consent
November 16. 1853.

M. G. Vallejo being duly sworn & examined says, in answer to

Question 1. State whether you are a native Californian and in what capacity you have served the Mexican Government?

Answer. I am a native Californian I joined the Mexican Army in 1824 as a Cadet, served ~~as a Commander~~ on the frontier, from 1824 to 1846,

Question 2. Do you know the tract of land called Las Mariposas, & have you been upon it & when?

Answer, I do, & have been upon it. First in 1828, have been there since then at different times, & in 1837, the last time, "Las Mariposas" is situated between the Chanchilas, waters, and the Merced River there are springs of water, near the middle & a stream of water between these two waters, wooded, called "Las Mariposas".

Question, When does the stream called Las Mariposas rise?

Answer, It rises in the first hills of the

Sierra Nevada Mountains.

CASE NO. 1 ND
PAGE NO. 171

Question, When does that Stream - Empty.

Answer, It runs towards the San Joaquin River, I think it empties there.

Question When does the Merced River Empty

Answer Into the San Joaquin also,

Question. What quantity of land do you estimate lies ~~between~~ on the banks of the Las Mariposas, stream & within the valley of that River?

Answer, The River commences between the hills, is ~~width about 200 yards~~, and near its mouth the valley is about one mile wide, as the River progresses the valley is different widths from 200 to 500 Yards.

Question. State when the Chowchilla, empties.

Answer, It runs South of the Las Mariposas and without any regular outlet spreads itself on the Tulare Valley - & is lost in ~~the~~ it

Question State how with the tract called Las Mariposas is in the side next of the Sierra Nevada Mountains,

Answer, We call the whole county lying between the Chowchillas Waters & the Merced River "Las Mariposas" and also the Stream running through it, The tract called

CASE NO. 1 ND
PAGE NO. 172

particularly Las Manipsas, is on the side next to the Llano Estacado, 40 or 5 miles, side.

Question. State what you understand by the particular tract called Las Manipsas granted to Alvarado, if you know it?

Answer. I understood it to be on the Manipsas Creek.

Question. State what you know of the Indian hostilities in that vicinity

Answer. The Indians there was always very hostile towards the whites In 1828, I was sent there at the head of an expedition against them, I encamped on the Manipsas. They remained hostile after that until 1846, all the time, I frequently received Orders to send troops there,

Question. Do you think any man could have lived on that tract - without a military force previous to 1848,?

Answer. I think not, very easily.

Question. Can you state what was the practice of the Governors of California as to granting extension of time to the grantee to take possession & cultivate, on account of Indian hostilities?

Answer. In several instances the Indians killed the white settlers, then the Governor always put them back in possession, and granted further time to comply with the conditions of settlement, and if the grantee was prevented by the Indians from taking

possession, whether he made an application or not, further time was granted.

CASE NO. 1[illegible] ND [illegible]
PAGE NO. 173

Cross Examined.

Question, What is the extent of the tract called Las Mariposas by leagues North & South & East & West?

Answer, The whole country we call Los Mariposas beginning at the creek of that name, and extending to Chowchilas ~~Creek~~ River is about 15 to 20 miles and an equal distance north to the Merced River and from the source of Mariposas creek to San Joaquin River 20 to 25 miles,

Question, What number of square leagues do you estimate the country called Las Mariposas to contain?

Answer, About, 30 square leagues.

Question, Do you know of any particular smaller tract included within the general boundaries named, called "Las Mariposas"?

Answer, I do,

Question Describe that particular smaller tract?

Answer The whole country in the neighborhood of the Las Mariposas Creek, north & south, and East & West on both sides,

Question, What are the boundaries of this

CASE NO. 1 ND
PAGE NO. 174

Smaller tract ?

Answer, That would depend on the quantity of land you wanted to include,

Question Has this smaller tract any natural boundaries apparent to the eye

Answer, The whole Mariposas tract is very plain, there is the Mariposas Creek down to the San Joaquin River and back to the mountains, Encamped by the Spring at the foot of the hills, from that point you see the slope of the mountains on either side, and the valley of the creek down to the San Joaquin River, and the timber on the creek.

Question Do you know the particular tract of land granted to Alvarado in this case, ?

Answer, I do,

Question, How do you distinguish separate the tract of land granted to Alvarado, from the great body of the Mariposas Country,

Answer, Because the Alvarado applied for the tract on the Mariposas Creek, & I understood it was given to him. (Objected to as not responsive to the question) by U.S. Atty

objection

Question, Can you give the exact boundaries of the tract granted to Alvarado ?

CASE NO. 1" ND
PAGE NO. 175

Answer. I cannot.

Question. Do you know any thing of the Grant to Alvarado you have ever heard of?

Answer. I do, I have seen the Grant, from the Governor.

Question. Who had the Grant when you saw it, & when was it

Answer. Alvarado, it was in Monterey and I believe, in 1845.

Question. How did you know it to be the genuine grant?

Answer. Micheltorena the Governor told me it was genuine.

M. G. Vallejo

CASE NO. 1 ND
PAGE NO. 176

U. S. Commissioners Office

The United States
vs
J. C. Fremont

Land Claim No. 1.

Testimony by consent
November 10. 1853.

Jacob P. Leese being called by Appellee and duly sworn, says, in answer to q

Question. What was the usage as to granting extension of time and whether you are a resident of California, & what office you have held?

Answer. I held office as Alcalde of Sonoma in 1844 & 1845. I only know the usage of the Government from hearsay. I have heard that such was the usage - and have so understood it.

Question. State what was the nature of the hostilities against Micheltorena in California in 1844 & 1845.?

Answer. The commencement was the days of people he brought with him, soldiers from Mexico, committed robberies in Monterey, stealing the furniture of houses &c & their general disorderly conduct. The war, after it was against the soldiers under Micheltorena, & not against him personally at first. Micheltorena, agreed to send with Alvarado & Castro & send his

Michelorena's troops out of the country in 60 days, before that time expired, it was ascertained that he did not intend to do so, and then hostilities commenced against him, which resulted in his defeat in battle of Cahuenga, & his leaving the country. He was succeeded by Pio Pico as Governor, whose Government was recognized by the Supreme Government of Mexico. I became a Circular from Los Angeles of his appointment as Governor, purporting to come from the Supreme Government of Mexico.

CASE NO. 1 ND [redacted]
PAGE NO. 177

Cross examined.

Question. In which party did Alvarado belong in the revolution against Michelorena,

Answer. To Castro's party, the party of the people of the country.

Question. Who was the regular Governor of California at that time,

Answer. Michelorena, the Commander in Chief & representative of the Supreme Government of Mexico.

Question. How did you learn these facts of the commencement of hostilities?

Answer. I was in Monterey at the time & heard them from public rumor.

Question. How did you learn about the agreement you spoke of between Michelorena & Alvarado & Castro, &

2 Seed

Answ. I cleaned it from Castro & Alvarado.

L. P. Leese

CASE NO. 1' ND

PAGE NO. 178

MS.

by

J. C. Fremont

United States of America, } ss.
Northern District of California.

CASE NO. 1 ND
PAGE NO. 179

I, Henry W. Dames a commissioner duly appointed by the District Court of the United States, for the Northern District of California, under and by virtue of the Acts of Congress, entitled "An Act for the more convenient taking of Affidavits and bail in civil causes, depending in the Courts of the United States," passed February 20th, 1812, and the Act of Congress, entitled "An Act, in addition to an Act, entitled 'An Act for the more convenient taking of affidavits and bail in civil causes, depending in the Courts of the United States," passed March 1st, 1817, and the Act entitled "An Act to establish the Judicial Courts of the United States," passed September 24th, 1789, **Do hereby Certify,** That the reason for taking the foregoing *deposition* is, and the fact is, the witness es me material and necessary in the cause in the caption of the said deposition named, ~~and that he~~ and that the same was taken by consent of parties

~~**I further Certify,** That notification of the time and place of taking the said *deposition* signed by me, was made out and served on the~~

~~to be present at the taking of the *deposition* and to put interrogatories, if he or they might think fit~~

I further Certify, That on the 10th day of November in the year of our Lord one thousand eight hundred and fifty three I was attended by J. W. Orr U.S. Att'y. and W. Howard counsel for Appellee and by the *witness*, who me of sound mind and lawful age, and the *witness* es by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the *deposition* s me by me reduced to writing, in the presence of the *witness* es and from their statement s and after carefully reading the same to the *witness* es they subscribed the same in my presence. I have retained the said *deposition* in my possession for the purpose of returning the same with my own hand to the Court for which the same was taken.

And I do further Certify, That I am not of Counsel nor Attorney for either of the parties in the said *deposition* and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof, I have hereunto set my hand and seal, this 11th day of November in the year of our Lord one thousand eight hundred and fifty three and of the Independence of the United States the ~~seventy~~ eighth

Henry W. Dames

United States Commissioner, duly appointed by the District Court of the United States, for the Northern District of California.

Vol. No. 15

United States District Court,

For the Northern *District*
of California

The United States

vs.

J. C. Fremont

M. G. Vallejo & J. P. Leese appellee

Deposition *on the part of the* — *taken before*

Henry B. Janes

United States Commissioner, on the
10th *day of* November 185[illegible]

Filed the 11th *day of* Nov 185[illegible]

Wm. A. Moore
Clerk

1 ND
PAGE 180

150

Nov. 11 1853

CASE NO. 1" ND
PAGE NO. 181

The President of the United States of America

To

George W. Fisher Esqr. Secretary of the United States Board of Commissions to Ascertain and settle Private land claims in the State of California

Greeting.

Whereas on Motion of the Attorney of John C. Fremont this day made a "Certiorari" was ordered, ordering you forthwith to transmit to this Court in the case of the United States vs John C Fremont the ~~xxxxxxxxx~~ filed Notes & Survey in the said case ordered by the said Board of Commissions & read in Evidence in said case — made by Juan Smith.

Therefore Laying all ~~xxxxxxxx~~ excuse Aside you are hereby Commanded forthwith to transmit said Filed Notes & Survey if in your office or keeping —

Witness the Hon. Ogden Hoffman Jr Judge of the District Court of the United States at the City of San Francisco the 26th Day of November AD 1853.

Inv. A. Maguire Clk

U.S. Dist. Court

Land Claim No.

CASE

PAGE

The United States

Appellants

vs

John C. Frémont

Appellee

Certiorari

Filed Nov. 21. 1853

Jno. A. Monroe [illegible]

Clk

Served the within by leaving a certified copy of the same with George W. Fisher Sec. of U. S. Land Commission this 21st day Nov. A.D. 1853.

Wm. H. Richardson

U. S. Marshal

By O. C. Palmer

Deputy

CASE NO. 1 ND

PAGE NO. 182

CASE NO. 1. ND.

United States District Court
for the District of California

United States
vs
John C. Fremont
Appellee

On appeal from
the U. States Board
of Land Commissioners

Now Comes the said
John C. Fremont by his attorney, and
suggests a diminution of the record in
this, to wit: The field notes and survey
in this case ordered by the Court below
which survey was made under the
authority of said Board and the Sur-
veyor General of the United States for
the District of California; and read
in evidence in the trial of this cause
in the Court below, has not been cer-
tified in the record & sent up in the
same by the Secretary of said Board,
all of which will appear by said
record and the certificates herewith
filed. The appellee therefore moves
the Court for a writ of certiorari directed
to the Secretary of said Board, commanding
him to certify said survey to this Court
and to send up a more perfect record.

E. C. Hamm
for Appellee

CASE NO. 1ND

PAGE NO. 185

United States

vs

John C. Fremont

Suggestion of

diminution of

Record

Land Claims No 1.

Howard

CASE NO. 1 ND
PAGE NO. 186

In the case of the Claim of John C Fremont for the tract of land called "Las Mariposas" a preliminary survey under the direction of the United States Surveyor General for California was ordered by the Board of Land Commissioners, and a copy of the field notes of such survey certified by the Surveyor General under date of Augt. 6 1852 & also a map of the land certified by said Surveyor General August 5. 1852 were returned to the Board as having been made under said order — The acting deputy surveyor having been A. W. Von Schmidt. These papers were before the Board on the hearing of the case, & were considered by me in making the case

San Francisco Nov 19. 1853

Edmund Rolle

late Comr

No 1. Mariposa

The survey by the U.S. Surveyor for Mariposa was made by an order of the Board, and was returned with the plat, & field notes. It was used before the Board on the trial and commented upon by the U.S. Law Agent and the counsel for the claimant. If it has not been incorporated into the record, I presume it was from the casual oversight of Atty. of the Board in giving directions to the Secretary as to the making out the transcript, which the Law requires the Board to cause to be made out. I cannot see for what purpose the survey was ordered, except to be used as evidence, and being used as such, it ought to be a part of the case, in reviewing the decision, as much as any other testimony.

H. J. Thornton

V — 5 1/2

U. S. Dist Court

Land Claims No.

CASE NO. 1 ND

PAGE NO. 188

The United States

vs

J. C. Fremont.

Motion for Certiorari

&c

Filed Nov. 21. 1853

Jno A Munn

Clerk

W. E. Howard Atty.

CASE NO. 1 ND.

CASE NO. 1 ND

PAGE NO. 189

At a Special Term of the District Court of the United States of America, for the Northern District of California, held at the Court House in the City of SAN FRANCISCO, on Monday the 21 day of November in the year of our Lord one thousand eight hundred and fifty-three

Present:

The Honorable OGDEN HOFFMAN, JR., *District Judge.*

The United States
— vs — Appellants
John C. Fremont
Appellee

On Motion of Counsel for Appellee —
Ordered that a "Certiorari" issue to Geo. W. Frisbie Secretary of the Board of Commissioners to ascertain & settle Private Land Claims in the State of California Commanding him to transmit to this Court forthwith the Field notes & survey ordered by the Board of Commissioners & read in evidence in the above cause if the same are in his office or keeping —

CASE NO. 1 ND
PAGE NO. 190

U. S. Dist. Court
Land Claims No 1

The United States
as Appellants

John C. Fremont
Appellee

Order for "Certiorari"

Filed Nov. 21. 1853
Jno A Morrow
Clerk

CASE NO. 1. ND.

CASE NO. 1 ND
PAGE NO. 191

U. S. Commissioners Office

The United States
vs
J. C. Fremont,

Testimony, by consent,
November 23, 1853.

Willard Bufell, being called by Appellee and duly sworn says,
in answer to -

Question. State how long you have resided in California and if you know the tract of land called "Las Mariposas", and if John C Fremont employed you to take possession of it, what acts you done by you therein

Answer. I have resided in California eleven years, I know the tract of land called "Las Mariposas", Col. Fremont employed me to take possession of it in the Spring of 1847, furnished me with provisions and farming utensils, here in this City,
I went with my family as far as the Cosumnes river, then I left my family and went out on to the place in company with another man, I cut some timber there with the intention of building a house & corral, but the Indians were so hostile that I was afraid to remain, One of the Chiefs, having a certificate from Col. Fremont that he was peaceable & well disposed towards the Americans, told me that the Indians on

CASE NO. 1 ND
PAGE NO. 192

the opposite side of the river, would kill me if they found me there, and advised me to leave. This Chief was living on the land, near to the mountains, and on the Mariposas river, he had a small hut, such as is usual with the Indians, he also had corn, and other vegetables under cultivation. He showed me the certificate from Col. Fremont,

I visited the "Mariposas" twice during the following Summer, with the intention of settling there, but was prevented from so doing by the hostility of the Indians, I could not raise a force sufficient to enable me to take possession. It was unsafe to live there with less than ten or fifteen men.
When the immigration came in in the Fall I took some of the men, with me to examine the place, they concluded that it was unsafe to remain there, and came on down to the settlements. Then I abandoned the effort to take possession of the tract, because it was not safe, on account of the Indians.

I first saw a house on the tract, in the Spring of 1851, there were several houses there then, I think the first settlement there by Fremont was made in 1849. I think so because I then saw him in Stockton engaged in packing out provisions, & Goods, & he told me that they were destined to this place, (Mariposas)
In 1851, I saw four or five houses there with gardens &c
After 1846 until 1849 or 50 it was unsafe for less than four or five men to travel there

much less to settle them, I think it would have been more unsafe before 1844 than after that time, and at any time for less than ten or fifteen to settle them.

(Map, attached to Transcript, being shown witness.) He says

CASE NO. 1 ND
PAGE NO. 193

The map does not look natural to me, but from memory I can describe the point where I attempted to settle. At first it was on the Mariposas, river, just below the falls, where are the first foot hills of the mountains, afterwards I went farther down thinking it might be more safe.

Col. Fremont first applied to me in 1846 to take possession of this tract, in the Fall of 1846, but we made no agreement until the Spring of 1847.

I understood the tract called "Las Mariposas" to be extend from the foot hills of the mountain to the San Joaquin river. I understood this from Fremont and from everybody.

Objected to

Cross Examined. During the various times you were on this tract of land did the Indians make any attack on you

Answer, Not then, but I have fought them this side of there on the Stanislaus river,

Question Can you bound the tract called "Las Mariposas"

Answer, I cannot, as to width, I only

know its length from the hills to the San Joaquin river,

CASE NO. 1 ND
PAGE NO. 194

During my first visit there, I discovered traces of Indians having roasted horses two or three days before, I usually encamped in the woods away from my fire in order to avoid the attacks of the Indians,

William Russell

CASE NO. 1 ND
PAGE NO. 195

United States of America,
Northern District of California. } ss.

I, Henry B Janes a commissioner duly appointed by the District Court of the United States, for the Northern District of California, under and by virtue of the Acts of Congress, entitled "An Act for the more convenient taking of Affidavits and bail in civil causes, depending in the Courts of the United States," passed February 20th, 1812, and the Act of Congress, entitled "An Act, in addition to an Act, entitled 'An Act for the more convenient taking of affidavits and bail in civil causes, depending in the Courts of the United States," passed March 1st, 1817, and the Act entitled "An Act to establish the Judicial Courts of the United States," passed September 24th, 1789, **Do hereby Certify,** That the reason for taking the foregoing *deposition* is, and the fact is, the witness was ~~—~~ material and necessary in the cause in the caption of the said deposition named, and ~~that he~~ the said Deposition was taken by consent of parties,

~~**I further Certify,** That notification of the time and place of taking the said *deposition* signed by me, was made out and served on the~~

~~to be present at the taking of the *deposition* and to put interrogatories, if he or they might think fit~~

I further Certify, That on the 23 day of November in the year of our Lord one thousand eight hundred and fifty three I was attended by S W Inge Esq U S Attys, and D E. Havard Counsel for Appellee

and by the *witness* who ~~was~~ of sound mind and lawful age, and the *witness* being by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the *deposition* ~~was~~ by me reduced to writing, in the presence of the *witness* and from his statement and after carefully reading the same to the *witness* was subscribed the same in my presence. I have retained the said *deposition* in my possession for the purpose of returning

the same with my own hand to the Court for which the same was taken.

And I do further Certify, That I am not of Counsel nor Attorney for either of the parties in the said *deposition* and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof, I have hereunto set my hand and seal, this 23 day of November in the year of our Lord one thousand eight hundred and fifty three and of the Independence of the United States the seventy Eighth.

Henry B Janes

United States Commissioner, duly appointed by the District Court of the United States, for the Northern District of California.

CASE NO. 1 ND
PAGE NO. 196

v — 8 —

Vol. No.

United States District Court,

For the Northern *District of* California

The United States
vs.
John Fremont

W Russell's **Deposition** *on the part of the* Appellee *taken before* Henry B Janes

United States Commissioner, on the 23d *day of* November 1853

Filed the 23d *day of* Nov 1853

Jno A Morrow
Clk

CASE NO. 1 ND

U. S. Dist. Court
Northern Dist. of California

The United States
—vs— Appellants
John C Fremont
Appellee

Nov. 26, 1853

CASE NO. 1 ND
PAGE NO. 197

Wm M. Eddy

being duly sworn in Open Court deposes and says = I am the Author of the Map of the State of California made in 1853 — now shown me =

Question, State upon what information or data the Mariposas County bounded by the Sierra Nevada the Chan Chillas the Merced and the San Joaquin are represented on your Map —

Answer — The location of the Village of Mariposa is from astronomical observations taken by myself — The County between Mariposa Village and the Mellings on the Merced River embracing a district of some 20 miles in width on the line of the road as laid down on the Map is from personal reconnaissance — The portion in the vicinity of the San Joaquin and the location of the Chan chilla originally placed upon the Map is from official data furnished me as Surveyor General of the State by two different Deputy County Surveyors of Mariposa County all of which was verified by myself from the data furnished me from the U. S. Surveyor Generals Office = And the Streams as laid down upon this Map coincide with the

Actual measurements made by the U.S. Deputy Surveyor in his survey from the Base line near Stockton to the four creek County. At ~~not~~ no part was the difference on the line last spoken of as ran by the U.S. Deputy Surveyor found to exceed what ~~might~~ might naturally occur in plotting a map on this scale. The location of the head waters of the Merced including the Yosemitte valley is placed upon the map from the data furnished by Lieut. McLane of the U.S. Army = The head waters of the Chauchillas is from the data furnished by the Deputy County Surveyors = The head waters of all the before mentioned streams ~~rise~~ arise in the Sierra Nevada Mountains

Cross Ex = ~~How many leagues is contained within~~ between ~~from~~ the summit of the Sierra Nevada Mountains and the San Joaquin and the River Merced & Chauchilla there are more than 100 square Leagues of land = between the San Joaquin the Merced & Chauchilla Rivers & the Base of the Mountains aforesaid there is something less than one hundred leagues of land

Wm M Eddy

CASE NO. 1 ND
PAGE NO. 198

U. S. Dist. Court
-10-

CASE NO. 1 ND
PAGE NO. 193

The United States

— v —

John C Fremont

Deposition of Wm M Eddy

Filed Nov. 26. 1853
Jno A Wynne
Clerk

U. S. Dist-Court
Northern District of California

The United States
vs Appellants
John C. Fremont
Appellee

Nov. 26. 1853

CASE NO. 1 ND
PAGE NO. 200

J. G. McDonald
being duly sworn in open Court deposes and says -
I am a practicable Surveyor - I am a Deputy Surveyor in the U. S. Surveyor Generals Office in the State of California -
Question = Will you state the Distance on Eddy's Map of the State of California of 1853 - from the point where the Chanchilla merges from the Sierra Nevada to the Mariposas River in a straight-line = Also the distance from the same point to the River Merced in a straight line =
Answer = it is Eight & one half Miles from the Chanchillas to the Mariposa River = and Nearly four Miles from the same point to the River Merced - according to the Scale of said Map =
I have been accustomed to survey Mexican grants in Texas for about seven years =

Question - State what is the usage & custom of Surveyors of Mexican Grants as to the Point of Commencement of Survey where four sides of the survey are mentioned but no particular point of Commencement is designated by the Language of the grant =
Answer - It is customary to begin at the first named boundary

Question – How would you survey a grant with the following boundary – bounded by the Sierra Nevada & the Rivers known by the names of the Chanchillas, & the Merced & San Joaquin –

Answer – I would begin where the first named River Emerges from the Mountains then I would proceed across the foot of the Mountains to the next River – then I would run down between the two Rivers following their meandering for quantity Then would be no difficulty in surveying the said Grant Provided the Mountains & the Streams could be found –

Cross Ex – I have never been on the Mariposas tract or in the Mariposas County – the opinions I have expressed are theoretical opinions from the said Map as aforesaid – I know nothing as to the correctness of the said Map – I should think there were near 100 square leagues of land within the boundaries above mentioned to Wit: – The Sierra Nevada, the Rivers known by the names of the Chanchillas of the Merced & San Joaquin – I mean when I say that the boundaries could be easily run off – that they could be if the boundaries mentioned in the grant could be found at the place –

Question – How would you run off ten square leagues within those general boundaries where no starting Point was given in the grant –

Answer I would Commence where the first mentioned Stream Emerges from the Mountains, thence along the foot of the Mountains to where the Second mentioned Stream Emerges from the Mountains & Meander down the two Streams for quantity - this would give three of the orginal boundaries - - -

Question - Does the Map in the Transcript conform to the Rules that would govern you in Making the Survey -

Answer It does not -

It is over twenty three Miles from the Source of the Chanchillas to the Source of the Merced -

J G McDonald

CASE NO. 1 ND
PAGE NO. 202

U. S. Dist. Court

CASE NO. 1" ND
PAGE NO. 203

The United States

— vs —

John C Fremont

Depositions of L. G. McDonald

Filed Nov. 26. 1853

Jno A Morris
Clerk

United States No. 1.
vs
John C. Fremont Et

Motion by the Appellee for leave to take further testimony in this Case, on the ground of newly discovered evidence, and Specially the depositions of Juan B. Alvarado, for the reasons Stated in the Accompanying affidavits & that the Case be Stood for further ev- E. D. Howard dence and argument on the same. for the Motion.

CASE NO. 1 ND
PAGE NO. 205

-11-

United States
vs
John C. Fremont

Land Claim No 1.

Motion to take further testimony.

Filed Dec. 5. 1853
Wm A Moore
Clerk

CASE NO. 1. ND.

CASE NO. 1 ND
PAGE NO. 206

United States
vs.
John C. Fremont

Personally appeared George W. Wright who being duly sworn deposeth and saith, That since the trial of the above entitled cause he has discovered other & further testimony to the following effect to wit; Testimony to prove that the time for the performance of the Conditions of settlement and building a house, and the obtaining judicial sundy and possession was ~~uniform~~ uniformly extended by Michelto in all grants similarly situated to that of the mariposas and that time was expressly ~~granted~~ extended to Alvarado in the above Stated Case

The affiant has used all reasonable diligence to prepare this case for trial before it was submitted. He could not procure the foregoing evidence because he did not know of its existance until after it was submitted

Sworn to December 5th 1853

before me
Henry P. Lanes U.S. Commr

G. W. Wright

U.S. Dist Court
Land Claim No 1

CASE NO. 1 ND
PAGE NO. 207

The United States

vs

John C Fremont

Affidavit of G W Wright

Filed Dec 5. 1853
Jno A Moore
Clerk

CASE NO. 1 ND.
PAGE NO.

United States
vs
John C. Fremont

Personally appeared Juan B. Alvarado who being sworn upon his oath says, That he did not take possession of Sutter and build a house within the time mentioned in the grant, because it was impossible for him to do so previous to the time he sold same to John C. Fremont owing to difficulties growing out of ward, forbidding and indian hostilities. And for the further reason that Michaltorena at the time the grant was made and delivered to him, as governor of California and Commander in Chief of the military forces promised this deponent a sufficient military force to enable him to take possession of his grant and defend himself against the indians. That Michaltorena was subsequently unable to do so, because there were no funds in the treasury to defray the expenses of supporting such force; but expressly agreed this deponent that the time should be extended to such time as the condition of the country would enable this deponent to take

possession without a military force; and Comply with the condition of his grant in this respect. Affiant further says, that the condition of the Mariposas Country was rendered more unsafe from indian hostilities after the grant because in the year 1844 the fort situated on the San Joaquin river in the vicinity of the grant, Commanded by Gen. Castro was broken up and the troops withdrawn by order of the government, which left that section of the Country entirely defenceless and exposed to indian hostilities. Affiant states further that it was the universal Custom of the Mexican Government to extend the time to grantees to comply with the Condition of settlement where the same had been retarded by indian hostilities. Affiant further says that the principal Consideration of the grant in this case to the Government was services which he had rendered the same.

Sworn to December 5 1853
before me
Henry B Janes
U.S. Commissioner

Juan B. Alvarado

CASE NO. 1. ND.
SHEET NO.
CASE NO. 1 ND
PAGE NO. 209
CASE NO. 1. ND.
SHEET NO.

U. S. Dist. Court
Land Claim No 1

CASE NO. 1 ND
PAGE NO. 210

The United States

vs

John C Fremont.

Affidavit of Gen Almonte.

Filed Dec 5th 1853
Jno A Moore
Clerk

CASE NO. 1 ND
PAGE NO. 211

At a Special Term of the District Court of the United States of America, for the Northern District of California, held at ~~the~~ Chambers in the City of SAN FRANCISCO, on Monday the 5th day of December in the year of our Lord one thousand eight hundred and fifty-three

Present:

The Honorable OGDEN HOFFMAN, JR., *District Judge.*

The United States appt
vs
John C Fremont appe

On reading & filing the Affidavits of Geo W. Wright, and D. B. Alvarado in this case, it is ordered that Claimant be allowed to file the Deposition of Juan B Alvarado de bene esse, as testimony.

U.S. District Court
Land Claim No 1

CASE NO. 1 ND
PAGE NO. 212

The United States
appt

v

John C Bennett
appee

Order to take further
testimony

Filed Dec 7 1853
Jno A Morrow
Clerk

CASE NO. 1" ND
PAGE NO. 213

U. S. Commissioners Office

The United States
John C. Fremont

Testimony de bene esse by Consent, Order of Dist. Court December 7. 1853.

S. W. Inyo Esq U. S. Attys. objects to the taking of this Deposition, as ~~irregular~~ illegal and contrary to Law. ~~irregular~~,

Juan B Alvarado, being duly sworn and cautioned, says in

Answer to

Question. Why did you not take possession of the grant originally made to you in this Case within a year, from the date of the Grant.

Answer. I did not take possession of it at that time because of the hostility of the Indians.

Question. How long did these hostilities continue?

Answer. All the time, even to the present day, though not as much so now as formerly.

Question. State any other reason, if any why you did not take possession.

Answer. Another and the principal reason for my not taking possession was that after I got the title in my possession I sent to Michaeltorena, and requested him to

CASE NO. 1 ND
PAGE NO. 214

give me force sufficient to enable me to take pos
session of the "Mariposas", assigning as a rea
son that I was very anxious to take possession
of the tract, Gen. Micheltorena said he would
furnish me with a force but at that time he
had none at his disposal, Micheltorena
however agreed to withdraw from the Grant
all the conditions therein expressed in order
to avoid the necessity of my taking possession.
I declined having the conditions stricken out
and told Gov. Micheltorena that my object
in obtaining the Grant, was to live on that
tract, which was a matter of great importance to me, Gen. Micheltorena then
told me that he would procure a force of
Californians and have them sent up there.

The reason for proposing to send Californians was that all the Mexican troops in the
Country were infantry, Soon after this
conversation a force was sent up to "Las Mari
posas" under command of Genl Castro and
established themselves on the Bank of the Rio
San Joaquin, in consequence of the loss of
horses by the robberies of the Indians, and
the want of other resources they were compelled
to return Shortly after there was a political
revolution, and Micheltorena's affairs
becoming embarrassed no more troops were
sent,
All this occurred in A.D. 1844, & 1845,
While I was Commander at Monterey, I collec
ted the cavalry and took them to my rancho
near Monterey, and was there organizing
the troops, for the purpose of taking possession

CASE NO. 1 ND
PAGE NO. 215

by ~~their~~ aid of the Mariposas. When I received an Order from Gen. Castro, to return with the troops to Monterey, there being then rumors of war. This was my last effort to take possession of the Mariposa Tract, the Orders I received from Government to organize forces for other purposes requiring my attention,

Question Did Gen. Micheltorena make you any promise respecting the Conditions of the Grant after the time of which you have spoken?

Answer He

Answer No. Gen. Micheltorena had left the Country and gone to Mexico, he left, I think, in January or February 1845.

Question. Was the promise of the forces to aid you made at the time the Grant was given you?

Answer. I received the title at my ranch and ~~two~~ days after saw Gen. Micheltorena, and it was at that time that Gen Micheltorena offered me the troops, as I have stated, I declined, having the conditions stricken out, as I desired to live there and wanted the troops for my protection.

Question Was ~~there~~ a custom of the Governors of California, in relation to the fulfilment of conditions of Grants, by grantees, and if so what was it?

Answer, There was, a custom, the Governor generally excused & overlooked the failure of grantees to take possession by reason

of hostilities This has always been the Custom
~~Such was~~ my Custom, when I was Governor
of California. The only reason recognized by
the Govern for extending the time to take pos-
session, was the Indian hostilities.

Cross examined by U. S. Attorney

Question Were you ever in the Mariposas
Tract?
Answer, I never was there
Question Did you go with Gen Castro and
the troops who went to the San Joaquin
Answer, I did not
Question Did any communications in writing
ever pass between you & Gr. Michelter
and, respecting the matters to which you have
testified, or?
Answer, No. they are all in connection
with him,
Question, Were the Indians dangerous and
hostile in that Country before the
Year 1844,
Answer Yes always,

Juan B. Alvarado

United States of America, } ss.
Northern District of California.

CASE NO. 1 ND
PAGE NO. 217

I, Henry B Janes a commissioner duly appointed by the District Court of the United States, for the Northern District of California, under and by virtue of the Acts of Congress, entitled "An Act for the more convenient taking of Affidavits and bail in civil causes, depending in the Courts of the United States," passed February 20th, 1812, and the Act of Congress, entitled "An Act, in addition to an Act, entitled 'An Act for the more convenient taking of affidavits and bail in civil causes, depending in the Courts of the United States," passed March 1st, 1817, and the Act entitled "An Act to establish the Judicial Courts of the United States," passed September 24th, 1789, **Do hereby Certify,** That the reason for taking the foregoing *deposition* is, ~~and the fact is, the witness~~ ~~material and necessary in the cause in the caption of the said deposition named, and that he~~ that the same was ordered by the United States District Court

~~**I further Certify,** That *deposition* signed by me, was made out and served on the notification of the time and place of taking the said~~

~~to be present at the taking of the *deposition* and to put interrogatories, if he or they might think fit~~

I further Certify, That on the 7th day of December in the year of our Lord one thousand eight hundred and fifty three I was attended by Isaac V. C. Howard Esq of counsel for Claimant and S W Inge Esq United States District Attorney and by the *witness* who was of sound mind and lawful age, and the *witness* was by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the *deposition* was by me reduced to writing, in the presence of the *witness* and from his statement and after carefully reading the same to the *witness* he subscribed the same in my presence. I have retained the said *deposition* in my possession for the purpose of returning the same with my own hand to the Court for which the same was taken.

And I do further Certify, That I am not of Counsel nor Attorney for either of the parties in the said *deposition* and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof, I have hereunto set my hand and seal, this seventh day of December in the year of our Lord one thousand eight hundred and fifty three and of the Independence of the United States the seventy eighth,

Henry B Janes

United States Commissioner, duly appointed by the District Court of the United States, for the Northern District of California.

CASE NO. 1 ND
PAGE NO. 218

Vol. — No. 15

United States District Court,
For the Northern District
of California

The United States,
vs.
John C. Fremont

J. B. Alvarado's Deposition on the part of the Claimant taken before Henry B. Janes United States Commissioner, on the 7th day of Dec. 1853

Filed the 7th day of Dec. 1853
Wm. A. Maguire
Clk

CASE NO. 1 ND

At a Stated Term of the District Court of the United States of America, for the Northern District of California, held at the Court House in the City of San Francisco, on Saturday the 7th day of January in the year of our Lord one thousand eight hundred and fifty-four

CASE NO. 1 ND
PAGE NO. 219

Present:

The Honorable OGDEN HOFFMAN, Jr., *District Judge.*

The United States
—vs— Appellants
John C. Fremont
Appellee

This cause coming on to be heard at the above Stated Term on Appeal from the final decision of the Commissioners to ascertain and settle Private Land Claims in the State of California Under the Act of Congress, Approved March 3d 1851, upon the Transcript of the proceedings & decision And the Papers & Evidence on which said decision was founded And also upon the testimony & Depositions taken before this Court = And the Argument of Counsel for the United States and for the Claimant being heard = It is Ordered Adjudged & decreed that the decision of the said Commissioners be in all things reversed and Annulled = And that the said Claim be held invalid & rejected.

Ogden Hoffman Jr
U. S. Dist Judge

CASE NO. 1' ND
PAGE NO. 220

U. S. Circuit Court

Dist

The United States

Appellee

vs

John C. Stevens et al

Appellees

Transcript of Judgment &c

Filed January 7th 1884

John A. Brown

Clerk

CASE NO. 1 ND
PAGE NO. 221

U. S. District Court
In Comm Law

The United States
vs
John C Fremont

Land Claim
No. 1.

The Claimant intends to appeal from the decision of the U. S. District Court, in this case, to the Supreme Court of the United States

To John A Marye
Clerk &c

V. E. Howard
Counsel for
J. C. Fremont

Land Claim No 1
U. S. Dist. Court

CASE NO. 1 ND
PAGE NO. 222

The United States

vs

John C Fremont

Notice of Appeal

Filed Jan 7 10 1854
Lyon Inman Clk

CASE NO. 1. ND.

CASE NO. 1 ND
PAGE NO. 223

U. S. District Court
In Common Law

The United States
vs.
J. C. Fremont

Land Claim No 1.

And this day comes the claimant by his Attorney C. E. Howard, and moves the Court that an Appeal be granted in the above entitled case, from the judgment of this Hon. Court, to the Supreme Court of the United States

C. E. Howard
Counsel for
J. C. Fremont

Land Claim No 1
U. S. Dist. Court

CASE NO. 1 ND.
PAGE NO. 224

The United States

vs

John C Fremont

Motion to Appeal

Filed Jan. 10, 1854
John A Morrow
Clerk

CASE NO. 1. ND.
PAGE NO.

At a Stated Term of the District Court of the United States of America, for the Northern District of California, held at the Court House in the City of SAN FRANCISCO, on Saturday the 14th day of January in the year of our Lord one thousand eight hundred and fifty-four

CASE NO. 1 ND
PAGE NO. 225

Present:

The Honorable OGDEN HOFFMAN, JR., *District Judge.*

The United States
— vs — Appellants
John C. Fremont

The Motion of Appeal made & filed in the above Cause having been heard by the Court it is Ordered that an appeal in the above Cause be granted on filing security in the Sum of two hundred and fifty dollars to be approved by the Judge.—

U. S. Dist. Court
In Common Law

CASE NO. 1 ND
PAGE NO. 226

The United States

v

John C. Fremont

Order granting Appeal

Filed Jany 14. 1847

CASE NO. 1. ND.

CASE NO. 1 ND
PAGE NO. 227

District Court of the United States of America
for the Northern District of California
Sitting at the City of San Francisco in the County of
San Francisco

John C Fremont, Claimant & Appellant

vs

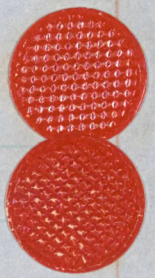
The United States, Defendants & Appellee

Know all men by these presents, that we Joseph C
Palmer, and George W. Wright
of the State of Cal-
ifornia are held and firmly bound to the above named
United States in the sum of Two hundred and fifty Dollars
to be paid to the said Appellee, for the payment of which
well and truly to be made, we bind ourselves and each us
our, and each of our heirs, executors and administrators, jointly
and severally by these presents, sealed with our seals and dated
the sixteenth day of January in the year of Our Lord One
Thousand eight hundred and fifty four, Whereas the above
named Appellant has prosecuted an appeal to the Supreme
Court of the United States, at the City of Washington, in the
District of Columbia, to reverse the decree rendered in the above
suit by the District Court of the United States for the
Northern District of the State of California, Now therefore the
condition of this obligation is such, that if the above named
Appellant shall prosecute his Appeal to effect and answer
all damages and costs if he fail to make his appeal good
then this obligation shall be void otherwise to remain in
full force and virtue, Witness our hands and seals the day

CASE NO. 1 ND
PAGE NO. 228

year above written — Jacob C. Delmer

In presence of — G. G. Wright



Approved this 16th January 1854

Ogden Hoffman Jr
U. S. Dist Judge

U S District Court

Land Claim No 30 "1"

The United States

vs

John C Fremont

Bond on Appeal

Filed Janry 16th 1854

CASE NO. 1 ND
PAGE NO. 229

CASE NO. 1 ND
PAGE NO. 230

UNITED STATES OF AMERICA, SS.

THE PRESIDENT OF THE UNITED STATES OF AMERICA,

To the Honorable the Judge of the District Court of the United States, for the Northern District of California _____

greeting:

Whereas, lately, in the District Court of the United States, for the Northern District of California before you, _____ in a cause, between The United States, appellants, and and John C. Fremont, Claimant, and appellee, the decree of the said District Court was in the following words, viz:

"This cause coming on to be heard at the above stated term, on appeal from the final decision of the Commissioners to ascertain and settle private land claims in the State of California, under the act of Congress approved March 3d, 1851, upon the transcript of the proceedings and decision, and the papers and evidence on which said decision was founded, and also upon the testimony and depositions taken before this court, and the arguments of counsel for the United States and for the Claimant being heard, it is ordered, adjudged and decreed that the decision of the said Commissioners be in all things reversed and annulled, and that the said claim be held invalid and rejected."—

as by the inspection of the transcript of the record _____

_____ of the said District

Court, which was brought into the Supreme Court of the United States, by virtue of an appeal

agreeably to the act of Congress, _____

_____ in such case made and provided, fully and at large appears.

And whereas, in the present term of December, in the year of our Lord one thousand eight hundred and fifty four the said cause came on to be heard before the said Supreme Court, on the said transcript of the record, and was argued by counsel: **On consideration whereof,** it is the opinion of this Court that the claim of the petitioner to the land as described and set forth in the record is a good and valid claim - Whereupon, it is now here ordered, adjudged and decreed by this Court that the decree of the said District Court in this cause be and the same is hereby reversed, and that this cause be and the same is hereby remanded to the said District Court for further proceedings to be had therein in conformity to the opinion of this Court. -

Mar: 10th

You, therefore, are hereby commanded that such further ——— proceedings be had in said cause, in conformity to the opinion & decree of this Court as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding: Witness the Honorable Roger B. Taney Chief Justice of said Supreme Court, the first Monday of December in the year of our Lord one thousand eight hundred and fifty four. —

COSTS:

Clerk,.....$

Attorney, ...$

$

~~Taxed by~~

Wm. Thos. Carroll

Clerk of the Supreme Court of the United States.

No 1

No. 72, December Term, 1854.

MANDATE

SUPREME COURT UNITED STATES.

Fremont vs U. States.

Filed June 4. 1855.
C. W. H. Chevers.
Deputy Clerk

CASE NO. 1 ND
PAGE NO. 234

CASE NO. 1 ND.

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

The United States
Appellants

vs

J. C. Fremont.

Sir: The United States intend to appeal from the final decree of the Court in this Cause.

S. W. Sharp
U. S. Dist. Atty.

To Jno. A. Munroe Esq
Clerk.

CASE NO. 1 ND
PAGE NO. 236

No 1

U. S. Dist Court

The United States

vs

J. C. Fremont

Notice of Appeal

Filed June 27. 1853.
by W. H. Chevers,
Deputy.

Four

June 28 '55

CASE NO. 1 ND
PAGE NO. 237

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

The United States
vs
John C Fremont

Appeal from the Board of Commissioners to ascertain and settle private Land claims in California.

Be it remembered, that on the return of the Mandate from the Supreme Court of the United States, (in the appeal from the decision of this Court heretofore rendered in this cause,) the said John C Fremont moved the Court to pro=nounce a decree, in pursuance of said mandate, in the form of the decree in that behalf elsewhere in the record of this cause appearing, (excepting the follow=ing words, to wit; "the said land to be surveyed in the form and divisions pre=scribed by law for Surveys in California and in one entire tract") to which motion the Attorney for the United States objected: And after argument, the Court, on the 27th day of June, 1855. refused to render the decree as prayed by the said John C Fremont, but added thereto the words above quoted, as to the mode of Survey, and rendered the decree in this behalf accordingly: to which decision of the Court, (adding the above quoted words,) and to the said portion of said decree directing the mode of

Survey, the said John C Fremont, by his counsel, at the proper time, duly excepted, and prayed that this his exception be signed and sealed by the Court, and made a part of the record of this Cause; which is accordingly done.

M Hall McAllister
Cir Judge U S Dist
Dist of California

Ogden Hoffman Jr
U S Dist Nor dist of Cal

CASE NO. 1" ND [illegible]
PAGE NO. 239

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

No 1

The United States

vs

John C Fremont.

Bill of Exceptions.

Filed June 28, 1855;

by Chevers

Deputy

Clerk.

Lockwood Tyler & Wallace
Attys for John C Fremont.

CASE NO. 1 ND
PAGE NO. 240

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

The United States
Appellants
vs
John C. Fremont

Sir: The United States intend to appeal from the final decree of the Court in this Cause

J. W. Boyle
U. S. Dist. Atty.

To. Volney E. Howard Esq.

No 1

U. S. District Court

The United States

vs

J. C. Fremont

Notice of Appeal

Filed June 28. 1855.
[illegible] Clerk
Deputy

V. E. Howard Esq
Atty

CASE No. 1 ND
PAGE NO. 241

I served this Notice in person by copy on V. E. Howard this 27th day of June 1855

W. H. Richardson U.S.M.
By J. E. Terrell Dep

CASE NO. 1 ND
PAGE NO. 242

At a Stated Term of the District Court of the United States of America, for the Northern District of California, held at the Court House in the City of San Francisco, on ~~Wednesday~~ Monday, the 23d ~~day~~ day of July in the year of our Lord one thousand eight hundred and fifty-five.

Present: Hon. M. A. McAllister, Circuit Judge,
The Honorable OGDEN HOFFMAN, Jr., *District Judge.*

The United States
appellants
—vs—
John C. Fremont,
appellee.

No 1

In this case on application of the United States Attorney, made in open Court, It is ordered by the Court that an appeal on behalf of the United States from the final decision of this Court rendered in said cause at the present term, be, and the same is hereby granted,

And that a certified transcript of the pleadings, evidence, depositions, and proceedings in the said cause be sent to the Supreme Court of the United States without delay.

CASE NO. 1. ND.

No 1

N. D. Dist. Court.

The United States,
appellants.

— vs —

John C. Fremont,
appellee.

Order granting Appeal,

Filed July 23rd 1855,

by Chenes,
Deputy.

CASE NO. 1 ND
PAGE NO. 243

CASE NO. 1' ND
PAGE NO 244

Supreme Court of the United States
December Term, 1855.

No. 167 The United States vs John C. Frémont Appt. } Appeal from the district court of the United States for the northern district of California.

Mr. Justice McLean delivered the opinion of the court.

This is an appeal from the northern district of California.

A final decree was entered in this case at the last term, and a mandate was issued to the district court, directing such further proceedings in conformity to the opinion and decree of this court, as according to right and justice and the laws of the United States, ought to be had.

This court reversed the decision of the district court, and ordered, adjudged and decreed, that the claim of

the said John C. Frémont to the land as de=
=scribed and set forth in the record, is a good
and valid claim; and that the said claim
be, and the same is hereby confirmed to the
extent of ten square leagues the quantity
specified in the original grant, set forth
in the record and within the limits
therein mentioned. the said land to be
surveyed in the form and divisions pre=
=scribed by law for surveys in California
and in one entire tract".

The mandate was filed in the
district court, and the counsel of Frémont
moved the court for an order in pursuance
of said mandate, in the form of the decree
in that behalf elsewhere in the record of
the case appearing, excepting the following
words," the said land to be surveyed in
the form and divisions prescribed by law, for
surveys in California, and in one entire
tract", which motion was opposed by the
District Attorney of the United States. The

district court entered the decree upon its record, refusing to omit the words, moved by the appellee, and to this refusal his counsel excepted.

No further proceedings were had, as appears from the record; and at a subse=quent day of the district court, the attorney of the United States applied for an appeal in open court, in behalf of the United States, from the final decision of that court, at the above term, which was granted.

The appeal was allowed the 23d of July, 1855, more than three months be=fore the commencement of the present term of this court: and no record of the case having been filed within six days, after the commencement of the term, as the rule requires, a record of the case being filed by the appellee, a motion is made to dismiss the appeal on the ground that there was no action of the district court on which an appeal could be taken. and also on the ground

that the appellants have failed to file the record within the rule.

It was the duty of the appellants to file the record and docket the cause within the first six days of the present term: the decree appealed from having been entered sixty days before the commencement of the present term. With the exception of California, Oregon, Washington, New Mexico and Utah, appeals, or writs of error, allowed are required to be docketed within the first six days of the term, if entered or allowed thirty days before its commencement.

The appellants having failed to file the record, it was filed by the appellee, which entitles him, under the rule, to have the cause dismissed.

But the counsel for the appellee insist that the appeal should be dismissed, on the ground that it was taken with the intent to bring before this court a review of its decree entered at the last

term. As there was no action by the district court, except the entry of the mandate upon its records the appeal brings before us only that which was transmitted to the district court by the mandate. This is a most extraordinary procedure. It is inconsistent with the relation which that court bears to this as an appellate court; and is without the authority of law.

The appeal is dismissed and the clerk is directed forthwith to certify this decision to the district court.

I, William Thomas Carroll, Clerk of the Supreme Court of the United States do hereby certify that the foregoing is a true copy of the opinion of said Supreme Court in the above entitled cause, delivered at December Term A.D. 1855, as the same remains on the records of said Court.—

In Testimony Whereof, I hereunto set my hand and affix the

seal of said Supreme Court
at the City of Washington
this 15th day of January
A.D. 1856. —

Wm Thos. Carroll
Clerk Sup. Ct. U. States. —

CASE NO. 1 ND
PAGE NO. 249

CASE NO. 1 ND
PAGE NO. 250

F

SUPREME COURT, U. S.

No. 167.

December Term, 1855.

The United States.
Appts.

vs.

John C. Frémont.

Opinion

Filed February 15, 1856.

John A. Wamsley Clerk

by W. H. Chesney
Deputy.

CASE NO. 1 ND.

UNITED STATES OF AMERICA, SS.

THE PRESIDENT OF THE UNITED STATES OF AMERICA,

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

greeting:

Whereas, lately, in the District Court of the United States, for the Northern District of California before you, _____ in a cause, between The United States, appellants, and John C. Fremont, claimant and appellee, the decree of the said District Court was in the following words, viz: _____

"It is therefore ordered, adjudged and decreed by this court, that the claim of the said John C. Fremont to the land as described and set forth in the record, is a good and valid claim, and that the said claim be and the same is hereby confirmed to the extent of ten square leagues, the quantity specified in the original grant set forth in the record, and within the limits therein mentioned, the said land to be surveyed in the form and divisions prescribed by law for surveys in California, and in one entire tract." _____

CASE NO. 1' ND
PAGE NO. 252

as by the inspection of the transcript of the record _____

_____ of the said district

Court, which was brought into the Supreme Court of the United States, ~~by virtue of~~ and filed by the appellee, the said John C. Fremont, agreeably to the act of Congress, and the rules of the said Supreme Court, _____ in such case made and provided, fully and at large appears.

And whereas, in the present term of December, in the year of our Lord one thousand eight hundred and fifty five the said cause came on to be heard before the said Supreme Court, on the said transcript of the record, ~~and was argued by counsel~~. ~~On consideration whereof~~, and on the motion of Messrs Crittenden and Bibb of counsel for the appellee to docket and dismiss this appeal pursuant to the 63^d. rule of this court, and was argued by counsel, as well against as in support of the said motion — on consideration whereof, it appearing to this court that the appellants have altogether failed to prosecute their appeal pursuant to the rules of this court, and also as the mandate only was entered on the records of the district court, no action being had thereon, that there was no ground for an appeal in this case from the said district court, it is therupon now here ordered, adjudged and decreed by this court that this cause be and the same is hereby docketed and dismissed, and that this cause be and the same is hereby remanded to the said District Court with direction to proceed therein according to law and in conformity to this decision. — And it is further ordered by this court that the clerk do forthwith issue a writ of procedendo in this cause to the said district court. — _____ 15th Jan: —

CASE NO. 1 ND
PAGE NO. 254

You, therefore, are hereby commanded that such _____ proceedings be had in said cause, _____ as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding: Witness the Honorable Roger B. Taney Chief Justice of said Supreme Court, the first Monday of December in the year of our Lord one thousand eight hundred and fifty five. —

COSTS:

Clerk,.....$

Attorney, ...$

$

~~Issued by~~

Wm. Thos. Carroll

Clerk of the Supreme Court of the United States.

No 1

No. 167, December Term, 1855.

MANDATE

SUPREME COURT UNITED STATES.

CASE NO. 1[illegible] ND
PAGE NO. 255

U. States vs Fremont

Filed February 15, 1856.
John A. Monroe,
Clerk
by W. H. Chevers,
Deputy

CASE NO. 1 ND
PAGE NO. 256

At a Stated Term of the District Court of the United States of America, for the Northern District of California, held at the Court House in the City of San Francisco, on Monday the 18th day of February in the year of our Lord one thousand eight hundred and fifty-six.

Present: Hon. M. A. McAllister, Circuit Judge, and
The Honorable OGDEN HOFFMAN, Jr., District Judge.

The United States
vs
John C. Fremont,

And now at this day comes the said Claimant John C. Fremont by his Attorney, and presents the opinion and Mandate of the Supreme Court of the United States dismissing the Appeal made herein on behalf of the United States to the said Supreme Court, Whereupon, and on Motion of said Claimant by his said Attorney, it is ordered that said opinion and Mandate be filed, and made a part of the record of this Court in this cause, and that the said Claimant John C. Fremont may proceed under the decree of this Court heretofore rendered in favor of the Claimant of said Claimant,

M Hall McAllister
Judge of Circuit Court

Ogden Hoffman Jr
Judge of U. S. District Court.

CASE NO. 1. ND.

CASE NO. 1" ND

PAGE NO. 257

No 1

United States District Court, Northern District of California.

The United States.

—vs.—

John C. Fremont,

Order that Mandate & Opinion of U.S. Supreme Court be filed &c.

Filed February 18. 1856.

John W. Monroe,
Clerk.

By H. A. Ahern
Deputy.

CASE NO. 1 ND
PAGE NO. 253

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

The United States of America vs John C Fremont | Appeal from the final decision of the Commissioners to ascertain and settle private land claims in the State of California.

Comes now the said John C Fremont by his attorney, and the United States by their attorney, also come: And the opinion and mandate of the Supreme Court of the United States having been filed in this Court, duly authenticated under the seal of said Supreme Court, and certified by the Clerk thereof, whereby it appears that at the December Term of said Supreme Court of the year of our Lord One thousand eight hundred and fifty four, that is to say, on the 10th day of March 1855. Upon the appeal by the said John C Fremont from the decree of this Court reversing the decision of the said Commissioners, and holding invalid and rejecting the claim of the said John C Fremont, (the said appeal having come on to be heard before the said Supreme Court upon the transcript of the record of this Court) the said Supreme Court rendered and pronounced a judgment and decree in the following words to wit:

"It is the opinion of this Court that the claim of the petitioner to the land as described and set forth in the record is a good and valid claim.— Whereupon it is now here ordered adjudged and decreed by this Court that the decree of the said District Court in this cause be and the same is hereby reversed, and that this Cause be and the same is hereby remanded to the said District Court for further proceedings to be had therein in conformity to the opinion of this Court."

It is therefore ordered, adjudged and decreed by this Court, (in conformity to the said opinion, judgment and decree of the said Supreme Court) that the said decree of this Court be, and the same is hereby in all things reversed, annulled and set aside;

And it is further ordered, adjudged and decreed by this Court, in like manner, that the claim of the said John C. Fremont to the land as described and set forth in the record, is a good and valid claim, and that the said claim be, and the same is hereby confirmed, to the extent of Ten Square Leagues, the quantity specified in the original grant set forth in the record, and within the limits therein mentioned, the said land to be surveyed in the form & divisions prescribed by Land Surveys in California and in one entire tract.

CASE NO. 1 ND
PAGE NO. 280

To,

S. W. Inge Esq.
U.S. Dist atty &c,

Please take notice, that on the 8th day of June 1855, at the opening of the District Court of the United States for the Northern District of California, the said John C Fremont will move the court to enter a decree in accordance with the foregoing draft.

Respectfully
Lockwood Tyler Wallace
for John C Fremont.

June 4th 1855.

CASE NO. 1 ND

CASE NO. 1 ND
PAGE NO. 261

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

The United States of America

vs

John C Fremont.

Draft decree.

Service of a copy of the within admitted
January 4th 1855. T W Sutton

See Bk 1 Decrees in Land Cases, p 206–209.

CASE NO. 1 ND
PAGE NO. 262

John C. Fremont
Appellant
vs.
The United States
Appellee

In the District Court of the Northern District of California.

This cause has been remanded to this Court by the Supreme Court of the United States whose Mandate concludes with the following words,

"On consideration whereof, it is the opinion of this "Court, that the claim of the petitioner to the lands "as described and set forth in the Record is a good "and valid claim; Whereupon, it is now here ordered "that the Decree of the said District Court in this "cause be, and the same is hereby reversed, and that "this cause be, and the same is hereby remanded "to the said District Court for further proceedings to "be had therein in conformity to the opinion of this "Court."

This Mandate having been filed, Counsel moves this Court to enter a Decree that the claim of the Appellant to the land as described and set forth in the Record, is a good and valid claim, and that the said claim be and the same is hereby confirmed, to the extent of Ten Square leagues, the quantity specified in the original Grant set forth in the Record, and within the limits therein mentioned.

The District Attorney U. S. in behalf

CASE NO. 1 ND
PAGE NO. 263

of the Government moves to amend the proposed Decree by adding the following words "to be located upon vacant lands within the bound-
"aries described and set forth in the Record
"by a Survey made under the authority of the
"United States and in the form and divisions
"prescribed by law for Surveys in California em-
"bracing the entire grant in one tract."

It is not essential, although the Court can see no objection to imbody in the Decree that the land is to be surveyed in one entire tract and in the form prescribed by law for Surveys in California. Without the insertion of such provision, the survey must necessarily conform to the law. The material amendment sought to be engrafted upon the proposed Decree is, to confine by express terms the location of the granted premises to "vacant lands" within the limits prescribed in the Record. To do so, would be to vary in a vitally important point the Decree which the Mandate of the Supreme Court directs us to enter. It remands this cause to this tribunal for "further proceedings to be had therein in conformity to the opinion of this Court." And if any doubt exist as to what those "further proceedings" are to be, that doubt is dissipated by reference to the last clause in the opinion of the Supreme Court which directs the case to be remanded with instructions to this Court

9

to enter a Decree conformably to this opinion".

Now that opinion is, that the claim of the appellant is good and valid not to the "vacant lands", but to the land "as the same is described and set forth in the record". It has been argued that by the 25th. Sec. of the Judiciary Act of 1789. the Supreme Court is directed in cases where they reverse the decree of a Circuit Court, to proceed to render such decree as the Circuit Court should have rendered or passed except where the reversal is in favor of a Plaintiff or petitioner in the original suit, and the damages to be assessed, or matter to be decreed are uncertain, in which case they shall remand the Cause for a final decision; and that the fact that this Cause has been remanded to this Court for further proceedings, is proof, that there is something uncertain to be made certain and final by the proceedings in this tribunal. Hence it is urged, that this Court has the power to modify the Decree it is ordered to enter. A brief consideration will diminish the apparent force of this suggestion apart from an examination of the authorities which have established the practice of the Supreme Court when acting under the 25th. Section of the Judiciary act. This Section applies exclusively by its terms to cases carried from the Circuit Courts U. S. to the Supreme Court and there reversed.

This Tribunal in adjudicating on this Cause

was neither acting as a Circuit Court nor as a District Court with the powers of a Circuit Court. It, as well as the Supreme Court in their jurisdiction over land claims under Mexican titles are acting in obedience to a commission entrusted to them by the act of 3rd March 1851 entitled "An act to ascertain and settle the private land claims in ~~the State~~ California", and this Court in so doing, is not acting as a Circuit Court known to the Judiciary Act of 1789, but is in the exercise of an anomalous jurisdiction alien from the general judicial powers conferred by that act on the Circuit Courts of the United States. Hence cause therefore is one to which the 24th Sec: of the Judiciary Act does not apply.

It has been urged in argument, that if this Court has any discretion in the premises, it should exercise it in so modifying the Decree as to confine it to "Vacant lands" with a view to obviate difficulties, and protect the rights of third parties, and it is suggested, that if not so modified, serious obstacles may be anticipated by the Surveyor in the execution of the Survey. There is no discretionary power vested in this Court in the face of the Mandate of its Superior, nor can rights of third parties, recognized by the laws of the land, be injuriously affected by the action of the Court on this question, nor can this Court anticipate the interposition of any obstacles (save those authorized by law) by any who have such rights

5

properly appreciate their own interest, that of the Appellant, and the protection the laws extend to both.

In considering the question before it, the Court is called on to ascertain what as between the Government and the appellant are the rights of the latter. The right of the appellant is, in the language of the Supreme Court to "a certain quantity of land" to be afterwards surveyed and laid off within a "certain territory". Now the motion is, so to amend the proposed decree as to confine that right to a certain quantity of land to be surveyed and laid off within an uncertain territory, the limits of which are to be ascertained not by the boundaries called for by the grant, but by limits fixed by the occupation of other parties. If that occupation has covered one half or the whole of the limits prescribed by the grant, the appellant in the one case is to have his location of land confined to within one half of the limits described in the Record, in the other alternative he is to be deprived of the right of location every where.

Is the right of the appellant so fleeting and evanescent as thus to be eluded in the one case and entirely defeated in the other? The Supreme Court declare the right of appellant to be "a vested and immediate interest" And the right thus characterized is decided to be not a claim to ten leagues specifically, but

a right to" a certain quantity of land to be afterwards
Surveyed and laid off within a certain territory".
Within what territory? Within that described and
set forth in the Record most assuredly. - There
could been none other in the mind of the Court,
Certainly none, whose limits were to be defined
by the occupation of third parties.

It is argued, that not having by a Survey
located the "certain quantity" of land, its location
at this time may interfere with the rights of third
parties. The Supreme Court anticipate this
Suggestion and say, "It is true, that if any
"other person within the limits where the quantity
"granted to Alvarado was to be located, had afterwards
"obtained a grant from the Government by specific
"boundaries before Alvarado had made his Survey
"the title of the latter grantee could not be impaired
"by any subsequent survey of Alvarado". . . . .
"But as between him & the Government, he
"had a vested interest in the quantity of land
"mentioned in the Grant. The right to so much
"land, to be afterwards laid off by official authority
"in the territory described, passed from the Govern-
"ment to him by the execution of the instrument
"granting it".

In view then of the powers of this
Court and of the rights of the appellant ascer-
tained as they have been by the highest tribunal

1 N D

CASE NO. 1 ND
PAGE NO. 263

in our County, and of the additional consideration that no rights of third persons can be injuriously affected by the action of this Court, the following Decree is directed to be entered.=

CASE NO. 1" ND
PAGE NO. 263

Surveyor. Generals Office
San. Francisco Cal
March 31. 1852.

Sir

You are hereby appointed a Deputy Surveyor of the United States for this State so far as may be necessary to enable you to execute a Survey of the tract known as the "Las. Mariposas" to the extent of ten sitios de Granada Mayer within the limits of the "Sierra Nevada and the Rivers called the Chunchilas, the Merced and the San Joaquin", and which you will perceive by the enclosed copy of the order of survey made by the Board of Land Commissioners on the 28th January 1852. they required to be made by "locating the said quantity "of ten sitios according to the claim of the said "Fremont and reference to the Sketch in plan an-"-nexed to this petition, but in such manner as to con-"fine such location within the said limits, and to "include in the survey so to be made the said quantity "of ten sitios".

Enclosed you have a copy of the Map a Sketch signed by Alvarado thus referred to as being annexed to the petition, and in the absence of more precise directions from the Commissioners you will have to make the survey in conformity to the wishes of the Claimant, controlled however and governed by the Alvarado Map.

Should the Claimants desire any other lines to be run as the boundaries of the claim than those which upon a personal examination of the County you should consider as being those intended by the Alvarado Map, you are at liberty to run them, in addition to those you consider the intended boundaries

The reasons for your assuming any lines or corners as the true ones of the claim, whether derived from an inspection of the ground, or the testimony which may be offered you, should be fully stated in your field book.

Should you be apprised of there being any interfering claim or title based upon any alleged Spanish or Mexican grant, you will notify the owner thereof (in writing) or the parties in possession of the time when you propose executing the work, so that they may be present at the running of the lines if they should so desire; and if they object to any line or corner, you will keep full notes of the nature and character of the objections and the names and residences of such persons as either party may believe to be able to give important evidence; and you will also carefully preserve and return any papers, &c &c which may be given you bearing upon the subject. If any line or corner is agreed upon, it must be so entered in your field book with names of consenting parties &c

You will be careful in making frequent

D J

observations as to the variations of the needle, and as a check upon the accuracy of your courses and distances, it would be very advisable for you to connect some of your corners with each other, or with some prominent natural object, by series of accurately observed angles - all the particulars in relation thereto, to be entered in your field book

After making the survey of the lines you may deem the intended boundaries of the claim, you will proceed to ascertain the area imbraced thereby, and should you find it to exceed that of ten sites, you will curtail the survey to that area by running such line or lines as may be necessary for that purpose -

You should erect mounds or posts at your corners or else identify them in such other way, that it may be easy, at any time from your notes to ascertain their position with certainty and without difficulty,

Your survey must be made in chains and links according to the Standard chain in this Office and by the true meridian, and the topography of the country is to be fully noted in your field book and whenever plans or diagrams will elucidate any point they should be made in your field book

Your field book when returned will have to be accompanied by an accurate map showing all the lines run by you upon a suitable scale and exhibiting the topography of the country

Before entering upon the Survey you and your men will

will have to be qualified in the manner prescribed when executing public work, and your field book will have to be verified by your self and them in the manner directed in the general instructions.

Your report in relation to the execution of this Survey should be full and minute and such as will afford all the information possible, going to explain the reasons for adopting and running the lines and thus make the Land Commissioners and this Office acquainted with all the facts, connected therewith, which you may be enabled to ascertain during the execution of the work.

As you have made an agreement with the parties interested in relation to your compensation for making the Survey &c nothing is required to be said by me upon the subject, except that under no circumstances whatever, is this Office to be in any manner responsible for any expenses growing out of the same.

Very Respectfully
Your. Ob't Serv't
(Signed) Sam'l D King
" S. Gen.

Mr. A. W. Von Schmidt
Present.

True copy of original in this Office,
S Gen. Office San Francisco
6th August 1852
(signed) Sam'l D King
S Gen

CASE NO. 1 ND
PAGE NO. 273

Copy

San. Francisco
June. 9. 1852

Samuel. D. King Esq
U. S. Surveyor. Genrl
State of California
Sir

I have the honor to report, that according to your instructions to me directed, bearing date 31st March last past ordering the survey of "Las. Mariposas" claimed by Col. John. C. Fremont I have completed the said survey, and now have the honor of laying before you the accompanying Field book and plan as the result of my labors.

Very. Respectfully
Your. Obt Servt
(signed) A. W. Von Schmidt
U. S Depty. Surveyor

True copy of orginal on file in this office
Surv'y Gen'l. Office San Francisco
6 August. 1852
(signd) Saml. King
Sur Gnl

CASE NO. 1 ND
PAGE NO. 274

Copy

San Francisco June 9. 1852.

Samuel D. King Esq
U. S. Surveyor Gen. State of California

Sir

In making the survey of "Las Mariposas" claimed by Col Jno C. Fremont, the whole tract has been located according to the Sketch furnished me by you.

The variation of the needle in Sections No 1 and No 2 I found by my observations to be 15° East. In Section No 3 I was unable to get a single observation, the nights being cloudy during the entire time of my surveying it. I therefore ran it with the same variation as Sections No 1 and No 2.

I was unable to find any old corner or starting point, the little Slough laid down in the Sketch I found to correspond, as also the general outline of the tract and I think it is in keeping with the Sketch,

I started from a high hill at the commencement of the plains, my reasons for which are that I consider it a very prominent point and one that can be found without difficulty at any time hereafter.

This hill is on the West side of the "Mariposa"

River just above the road leading from Bells ferry on the "Merced" to "Fort Miller" on the "San Joaquin" upon its summit I erected a stone monument styling it "Monument Hill" Thence I ran down on the plains and crossed the little slough as represented p^r plan

The land on the upper part of this line is poor with but little grass, that on the lower part however is first rate, timbered on the River bank and covered with fine grass clover and wild oats,

The "Mariposa" River branches out in three different channels as per plan and looses its waters on the plains below, The "San Joaquin" river is distant about fifteen miles from the lower line of this Section I crossed the three branches of the "Mariposa, thence run up on the other side of the River to the place of beginning. The soil on the lower part of this line is exellent with fine grass and some little timber, the upper part of the Section is poor and the grass upon it not good.

The lines in this were run according to my own judgement, The survey of Section No 2 was also run according to my best judgement in Keeping with the Sketch accompanying my instruc-tions, finding it impossible to follow the dividing ridge as that would have taken in a scope of country greater than the claim calls for I therefore run from hill to hill selecting the highest points as well as the circumstances and nature of the

ground would admit, of in both sides of the river,
The ground in this Section gradually rises from hills to mountains, the soil is poor with here and there a little spot that might be cultivated,
Timber scattering consisting chiefly of white Oak of small growth, grass poor
In this section we found considerable quartz on the river we saw many miners at work, in fact this section might be termed as the commencement of the mining district
The upper section No 3 commences at the North East corner of Section No 2. and is the roughest of the whole tract with a continuous succession of hills and ravines. This is the last I run according to my own judgement. The whole of this section is mining land consisting of river gulch and quartz mining – of the latter there are immense ledges of stone near the upper part of this Section. The line is run from ridge to ridge, and on the ridges whenever it would admit of it, The Northern part of the line passes on the top of a high ridge this is not however the main ridge of the Sierra Nevada but merely a spur The main ridge I should suppose to be at least fifteen miles further to the N. E. of this point The soil is poor and covered with granite and quartz rock, The timber is not of the first quality being rather short on the trunk – very little grass – only grows on the borders

of the small creeks — some fine little streams with fine water &c

The nature of the country is about one and the same thing in the entire Section of No 2.

I made the survey without any interference from the mining population whatever

Very Respectfully
Your Obt Servt

(signed) A. W. Von Schmidt
U.S. Dep Y Surv

True copy of the original on file in this office
Surv Gent Office San Francisco
6 August 1852

Sam D. King
Sur Gen

Section N°1

Field Notes of the Survey of "Las Mariposa" in the State of California by Alexey W. Von Schmidt United States Deputy Surveyor under instructions of Samuel D. King Esqre Surveyor General of the Public Lands in the State of California bearing date March 31st 1852.

Variation of needle 15° East

Sec N°1. Commenced on the top of a high rocky hill named Monument hill on the West side of the Mariposa River at the foot of the hills and Commencment of the plains and above the road leading from Bells Ferry on the Merced to the Chowchillas and Fort Miller. The top of the hill is covered with large stone and some oak trees of a small growth. From this point an extensive view presents itself of the adjacent country. On the top of the hill I erected a large Stone monument. A White oak tree 18 in. diameter bears N 37° 3/4 W. distant 2 chs 30 lks. A white oak tree 17 in. diameter bears S 7° 8 1/2 W distant 1 ch 9 1/2 lks.

A black oak tree 14 in. diameter bears S 8° 1/2 E. distant 0 chs. 75 lks.

Thence down on the plains—

S. 56° W. towards the San Joaquin River to foot of hill 10 chains— a ridge of small hills just to the right

run down about 20 chains they then run off in a
Northerly direction. 64 chs to road leading from
Betts ferry on the Merced to Fort Miller 400
chs 26 lks. planted stake and made a mound
Soil poor grass not very good. A large tree in the
River bears S 30° E- A large willow tree 12 in. diameter
bears S. 38¼ W. Distance to bank of the river 17
chains- To tree 35 lks.

Thence

N 76¼ W. run for a large oak tree being the outside one of
all in sight= 50 chs across slough 10 lks wide runs
N W.- 67 chs across same slough 12 links wide 180 chs
~~across~~ same slough 12 lks wide- To tree 180 chs 70 lks
marked tree three notches both sides. Stands on West
side of slough. Soil not very good- grass better than
the last. A White oak 29 in diameter bears S 47°
E distant 7 chs 23 lks- Forks of River bears S 58½ W
distant 49 chs. 16 lks to a large oak tree on chain
below the forks Stands in the middle of the north
branch. At this point two Squatters by the names
of Betts and Crawford claim One hundred and
Sixty acres each. from this point down the river
upon both sides

Thence

N 82 W. to Slough 18 chs 70 lks 1 chain wide. To tree 73 chs 24
lks marked tree three notches on both sides. A large
oak 54 in. diameter bears S 3½ W distant 6 chs
8 lks. Two small oak trees fork near the ground
18 in diameter bears N 3¼ W. distant 3 chs 75 lks
Junction of Slough with North branch of River bears

S 12° E distant 27 chs and lower line of Squatters claim - Soil first rate - Some timber - fine grass

Thence

N 80¼ W. run for a large black oak tree - To tree 56 chs 60 lks - marked tree three notches on both sides Soil and grass as last

Thence

S 88½ W. run for a large Burr oak Standing on bank of the north branch of the River. 207 chs 36 links marked tree four notches on both sides. A large hollow oak bears S 5¼ W distant 2 chs 75 lks.

Thence

S 80° W. run for an oak tree standing on north bank of north Fork or branch - To tree 91 chains - Marked tree three notches on both sides.

Thence

S 79¾ W. run in the direction of a Solitary tree standing on the South bank of north branch - 51 chs 50 lks made a mound and planted a stake, being the S. W. Corner of Section No 1.

Thence

S ¾ W. To north Fork 10 chs 40 lks 40 lks wide - To middle Fork 76 chs 50 lks. 40 lks wide - To main River 120 chs 50 lks wide. blazed a large oak tree Stands in middle of River - 160 chs planted a stake and made a mound Making S. E. Corner of Section No 1. Soil 1st rate - rather wet. grass fine - clover and wild oats &c -

Thence

N 79½ E run for a Solitary oak tree (very large) To tree 311 chs

CASE NO. 1 ND
PAGE NO. 282

East

80 lks marked trees notches both sides.

Thence

460 chs. 70 lks made a mound and set a stake A large Quarty rock (Castle rock) bears N 46¾ E. A sugar loaf mountain bears N 8¾ E Monument hill bears N 3 E.

N 60° E

Thence

204 chs 10 lks planted a stake and made a mound Monument hill bears N 10¼ W Col Fremonts house bears N 78¼ W Sugar loaf Mount bears N 6¼ E.

Thence

N 1° 4¼ E 59 chs cross Road leading from Bells Ferry on the Merced to Fort Miller - 112 chains planted a Stake and made a mound - Sugar loaf Mount bears N 6¼ E. Col Fremonts house bears S 73¼ W a Sugar loaf Mountain bears S 8¾ E.

Thence

N 20¼ W. run for monument on monument hill place of beginning - To Mariposa River 89 chs 2 chs wide 93 chs across an old slough or bed of the River 20 lks 94 chs across another old bed 10 lks wide 97 chs across another 40 lks wide - to Monument 119 chs 30 lks - Soil rather poor on the last three courses Some timber on River banks and some fine grass &c.

Section No. 2. Variation of the needle 15° East.

Commenced at N. E. Corner of Section No. 1.

Thence

N 31¼ E. To hills 110 chs - 168 chains made a monument

out of Stones. Ground rolling, land poor Some good grass- Pass over Several veins of quarty

Thence

N 5° E. run for a white oak tree- To creek 67 chains 10 lks wide- To tree 102 chs 57 lks Marked tree 4 notches on both Sides.

Thence

N 6½° E. 12 chs 64 lks little creek 10 lks wide fine water 29 chs made a Monument out of quarty rock Ground rolling about the Same as last. A white oak tree 24 in. diameter bears N 63° W. distant 2 chs 53 lks.

Thence

N 50¼° E. run for a tree standing on the top of a high rocky hill- 19 chs a deep ravine- To tree 40 chs 50 lks Marked tree 3 notches both Sides.

Thence

N 36½° E run for two White oak trees (the right hand one of the two) To tree 89 chs 15 lks Marked tree 3 notches both Sides.

Thence

N 41¼° E run for a White oak tree the top just visible from the Station. To the tree 45 chs 77 lks Stands within 10 lks of a large pile of Quarty rock- Marked tree 3 notches both Sides- Castle rock bears S 88° E. Ground hilly little grass Soil poor.

Thence

N 35½° E runs for a White oak tree on the top of a high hill- part of the tree grows over a rock- To a little branch 27 chs- 5 lks wide little water running

To the tree 63 chs 50 lks— Ground very rough, little grass— Soil poor. Some little timber. A white oak 18 in. diam^r bears N 2° 1/2 W. dist. 30 lks.; a white oak 19 in diameter bears S 6° 1/2 E. distant 28 lks.

Thence

N 5° 3/4 E. run for two white oak trees (the right hand one of the two) standing on a bald hill. To Stony Creek 32 chs 50 lks. 20 lks wide. To tree 114 chs. 37 lks— marked tree 4 notches both sides. Castle rock bears S 11/4 W. a white oak 25 in diameter bears N 1° 3/4 W distant 10 lks.

Thence

S 5° 1/4 E. run for an oak tree on top of a hill. To a little creek 31 chs 50 lks. 8 links wide— another creek 19 chs 10 lks wide— To tree 97 chs marked tree 3 notches on both sides. On this line passed the first pine tree. A Sugar loaf mound bears N 5° 4 1/2 W. a white oak tree 18 in diameter bears S 70 1/2 E. distant 1 ch: 38 lks. Ground very rough and hilly. Some fine grass and good white oak timber with some underwood &c.

Thence

N 4° 7/4 E. run for a little Scrubby oak— To the tree 33 chs 60 lks. Sugar loaf mound bears N. 67° W.

Thence

N 4° 8 1/4 E. run for a White oak— 36 chs 48 to tree. The tree has been marked 3 chops before— remarked 3 notches both sides

Thence

CASE NO. 1 ND
PAGE NO. 285

S. 60° E. run for a White oak tree. To tree 40 chs 40 lks Marked tree 3 notches both sides. Country very hilly & rocky — Some fine White oak timber — little grass — Soil poor.

Thence

N. 56½° E. run for a White oak tree standing on a high hill To tree 36 chs 30 lks — Marked tree 4 notches both sides — A White oak 19 in diameter bears S 3½° E. distant 28 lks A Sugar loaf Mound bears N 82¼° W.

Thence

N. 62½° E. run for a white oak tree on a high ridge. To tree 87 chs 40 lks Marked tree 3 chops both sides — a white oak tree 23 in. diameter bears S 15½° E. distant 90 lks Sugar loaf Mound bears S 88½° W.

Thence

S 86½° E. run for a tall pine on top of a high hill. To tree 42 chs 50 lks Marked tree 3 Notches both sides a small White oak 15 in diameter bears N 20° W dist. 1 ch 12 lks.

Thence

N° 23¾° E. run to a small white oak tree standing on a high ridge — To a little Creek 64 chs 20 lks wide To a road leading up to Mariposa and Agua Frio 67 chs. To tree 148 chs Marked tree on side came on 3 notches & side went off X and 2 Notches. This being the N. E. Corner of Section N° 2. A white oak tree 18 in diameter bears S 60¾° E. dist. 76 lks — a White oak 40 in diameter bears N 2½° E distant 1 ch 50 lks.

CASE NO. 1 ND
PAGE NO. 286

Thence

N. 75° W. run for a large black looking pine tree on a high ridge on the opposite side of the Mariposa River— To River 33 chains across River 80 links To tree 65 chs 20 lks marked tree on side came on X & 2 notches, and X and 3 notches on side went off— This makes the N.W. Corner of Section No. 2. A white oak 20 in diameter bears N 48° 1/4 W dist. 88 lks— A pine tree bears N 12 1/4 W dist. 2 chs 57 lks

Thence

S 21° 1/4 W. run for a white oak tree— To a little creek 40 chs 10 lks wide— To tree 65 chs 25 lks

Thence

S 63° 1/2 W. run to a small white oak tree. To tree 13 chs 48 lks Marked tree two notches both sides

Thence

S 81° 1/4 W. run for white oak tree on top of rocky hill— To tree 122 chs 50 lks— Marked tree 4 Notches both sides A white oak 30 in. diameter bears N 8° E dist. 16 lks A large white oak 26 in diameter bears S 4° 3/4 E dist. 47 lks— Country very rough and rocky Some fine timber— Small growth— grass very poor— Soil red— fine gold Soil— Miners at work on the River.

Thence

S 7° 8/4 W. run for a large white oak tree on the top of a high hill. To tree 48 chs Marked tree 3 Notches both sides

Thence

S 66° 3/4 W. run for top of sugar loaf mound— To small creek

40 chs. 15 lks. wide— To top of mound 154 chs. made a large Stone Monument. A high peaked Mountain bears N. 5° W— Castle rock bears S. E.

Thence

S 44 1/4 W — Run for a White Oak tree 50 chs. passed a great Quartz vein looks very much like a wall— To a little creek 100 chs. 5 lks. wide— 102 chs. another great Quartz ledge To tree 152 chs. 60 lks.— Marked tree 3 notches both sides— A white oak 26 in. diameter bears N. 33 1/4° W. distant 1 ch. 22 lks.— Castle rock bears S. 3° 7 1/2 E.

Thence

S 32 1/2 W — Run to a White oak tree— To a little branch 100 chs. 8 lks. wide— To tree 150 chs. 20 lks. Marked tree 3 Notches both sides.

Thence

S 48 W — Run for lone tree on top of high mound— To tree 63 chs. 73 lks.— marked tree 3 chops both sides A small Scrubby oak 15 in. diameter bears S. 51 1/4° W. distant 2 chs. 72 lks.— A round top hill bears N. 66 W.

Thence

S 28 1/4 W. — Run for monument on monument hill. To Monument 285 chs. 73 lks.— Ground rolling— soil poor— very few trees— grass poor.

Note. — The lower line of Section No. 2 being in Common with the upper line of Section No. 1. S 20 1/4 E 119 Chains 50 lks. to the point of beginning

Section No. 3 Variation of the needle 15° East.

Commenced at the N. E. Corner of Section No. 2.
Marked Side went off a blaze and 2 Notches
Thence
N. 63 3/4 E. run for a white oak tree on the top of a ridge
To tree 20 chs. 50 lks. Marked tree 3 chops both
sides. Soil poor. timber of various kinds such as
white oak, pine & undergrowth &c.
Thence
N 62 1/4 E run for a large white oak tree. To tree 15 chs. 40 lks.
Timber the same as last. Marked tree two notches
both sides.
Thence
N. 73 3/4 E. run for a white oak tree. A little Creek at 16 chs.
11 lks. wide. Another Creek 66 chs. 15 lks wide
Another Creek 112 chs. 25 lks. wide fine
water. To tree 134 chs. 90 lks. Marked tree both sides
3 notches. A white oak 26 in diameter bears S 7 9 3/4
E. dist. 2 chs. a white oak 30 in. diameter bears
N 3 1 3/4 E dist. 2 chs. 25 lks.
Thence
N 1 1/4 W. run for a large black oak tree on the top of a
high hill. To a crak 51 chs. 15 lks. wide. To tree
98 chs. 75 lks. Marked tree 3 notches both sides.
Country very rough. tremendous large granite stone
cover the ground in all directions. Timber white &
black oak. Pine &c.
Thence
N. 79 E. run for a large pine tree standing among a large
pile of granite rocks. To tree 21 chains. Marked
tree 3 notches both sides.
Thence

CASE NO. 1 ND
PAGE NO. 289

S. 7° 4½ E. run for a tall Pine tree.- To tree 27 ch^s. 50 lk^s. Marked tree 3 Notches both sides.

Thence

S. 62° 2½ E. run for a large Pine tree- To tree 13 ch^s. 80 lk^s. Marked tree 3 Notches both sides.

Thence

S. 76° 3/4 E. run for a white oak tree.- To tree 16 ch^s. 80 lk^s. Marked tree 2 Notches both sides- A Pine tree 16 in. diameter bears N 34° W dist 1 ch. 25 lk^s. A black oak 18 in. diameter bears S. 68° E. dist. 85 lk^s.

Thence

N. 2° 3/4 W. run for a large Pine tree standing among some large granite rocks- To a little creek 45 ch^s. 10 lk^s. wide.- To tree 88 ch^s. 90 lk^s. (tree has been marked before) Marked tree 3 Notches both sides Ground mostly Covered with large granite Stones Poor timber- Chapparal- Country very much broken up by deep ravines.

Thence

N. 11° 3/4 E. run for a large Pine tree just below a large pile of granite rocks.- To tree 104 ch^s. and 50 lk^s. Marked tree 3 Notches.

Thence

N. 1° W. run for a tall Pine tree. To tree 8 ch^s. 15 lk^s. Marked tree 2 Notches both sides

Thence

N. 25° 3/4 W. run for a white oak tree on the top of a ridge To tree 47 ch^s. 25 lk^s. Marked tree with 3 Notches both sides. A white oak twenty two in.

diameter bears N. 7° 1/2 W. distant 35 lks. a large white oak 26 in. diameter bears N. 34° 1/2 E. dist. 2 ch 12 lks. Some good white oak timber ground not so rough as the last.

Thence

N. 15° W. run to an oak tree — To small Creek 13 chs. 7 lks. wide — To tree 26 chs. 50 lks. Marked tree 3 notches both sides. A quartz mill bears N. 37° W. (Called Stockton Mill) Forks of Stockton Creek bears S. 26° W about 25 chs.

Thence

N. 19° W. run for a white oak tree on a ridge. Small Creek at 12 chs. 8 lks wide — To tree 52 chs. 40 lks. — Marked tree 4 Notches. A white oak 16 in diameter bears S. 34° W. dist. 50 lks. — A white oak 26 in. diameter bears N 21 1/2 E. distant 1 ch 25 lks. Quartz Mill bears S. 47° W.

Thence

N. 22° W. run from a small white oak tree — To tree 22 chs. Marked tree 4 Notches both sides.

Thence

N. 51° W. run for a Pine tree on a high peak on the other side of Stockton Creek near the top of Main ridge To Stockton Creek 12 chs. 50 lks. 50 lks wide. To tree 36 chs. 50 lks. — Marked tree both sides 3 Notches. A large adoba house in centre of Mariposa town bears S. 2° 1/2 W. A quartz Mill bears S. 16° 3/4 W.

Thence

N. 23° 3/4 W. run for a small white oak on top of Main ridge being the highest peak in this ridge or mountain

To tree 11 chs. — Tree has been marked 12 chaps before remarked tree 12 notches — A quartz Mill bears S. 9½ W. — A white oak 13 in. diameter bears N 1½ E dist. 1 ch 25 lks. — A black oak 16 in. diameter bears S 82½ E. dist. 58 lks. — A black oak 10 in. diameter bears S. 40¼ W. dist. 58 lks. A black peaked Mountain bears S 86½ W.

Thence

N. 38½ W. To a large white oak tree 7 chs. 30 lks. Marked tree 3 notches both sides. Black peak bears S. 83° W. Thick Chapparal bushes on the last two lines — very rough & rocky — little timber &c.

Thence

N. 9° E. run for a white oak tree — To tree 9 chs. 55 lks. Marked tree 3 notches both sides — Black Peak bears S. 80° W.

Thence

N. 41½ W. run for a large Pine tree standing in a cluster of pines on top of main ridge — To tree 39 chs. 70 lks. — Marked tree 3 notches both sides — Black peak bears S. 63¾ W.

Thence

N 41¼ W. run for a white oak tree on a high ridge — at 16 chs. crossed two ditches — To tree 39 chs. 60 lks. Marked tree 3 notches both sides — Black peak bears S. 43½ W.

Thence

N. 61¼ W. run for a Pine tree — 20 chs. cross road leading from Mariposa town to Maxwell's Creek — Small Creek at 35 chs. 8 lks. wide — 36 chs. another Small

Creek 6 lks wide. To tree 67 ch. 20 lks. Marked tree X and 3 notches on four sides. Mariposa town bears S. 3½ E. Pine peak bears S. 45 W. Mount Bullion bears N. 57 W. Soil, Scarcely none Some little timber but poor small growth. Chapparal &c

Thence

S. 79½ W. run for a black looking Pine tree standing just on the left of a high hill on the other side of the East Fork of Mariposa River. To River 4 ch. 25 lks wide heads about a mile and a quarter ~~of a mile~~ above this. Creek forks 3 chains above this point. A road crosses at this place leading from Mariposa town to Stockton. To tree 71 ch. 30 lks. Marked tree 3 Notches both sides. Pine peak bears S 13½ E.

Thence

S. 53 W. run for a large Pine tree. To a road Stockton and Mariposa 10 ch. 30 lks. Another road at 38 ch. To tree 48 ch. 45 lks. Marked tree 3 Notches both sides. Soil poor rocky little good timber.

Thence

N. 74 W. run for a Pine tree standing on top of a round top hill. To tree 20 ch. 20 lks. Marked the tree 3 notches on both sides. Mount Bullion bears N. 18 W. Agua Fria town bears S. 12¾ W. Green top Mountain bears S 21¾ E.

Thence

N. 84 W. run for a large Pine tree. To a small Creek 36 chs

10 lks. wide. To a tree 42 chs. 10 lks. Marked tree 2 notches both sides.

Thence

N. 7° W. 0½ run for a white oak tree. To tree 11 chs. 60 lks. Marked tree 2 notches both sides.

Thence

N. 84° W. run for a Pine tree. To tree 11 chs. 85 lks. Marked tree 3 notches both sides.

Thence

S. 85° 5/4 W. run for a tall Pine tree. To tree 31 chs. 69 lks. Marked tree 16 notches and 4 X. A three pronged white oak 31 in diameter bears N. 54° 1/2 W. distant 90 lks. A white oak 32 in diameter bears S. 81° W. 82 lks. A white oak 30 in. diameter bears S. 13° 3/4 E. distant 56 lks. A low tree on Mount Wright bears S. 20° 3/4 E. A high peak of Mount Bullion bears N. 7° W.

Thence

S. 4° 16 3/4 W. run for a tall Pine tree. At 15 chs. crossed road leading from Agua Fria town to Stockton. To Creek or West branch of Mariposa River 18 chs. 50 lks. wide within a mile of its source. To tree 26 chs. 60 lks. Marked tree 2 notches both sides.

Thence

S. 5 1/2 W. run for a solitary Pine tree standing on a high hill covered with Chapperal. The whole of this line passes through Chapperal. plenty of quartz. Rich diggins close at hand. To tree 25 chs. 18 lks. Marked tree 3 notches both sides. Black peak

bears S. 7 3/4 E. Lone tree on Mount Wright bears S. 2 1/2 E. A high peak on mount Bullion bears N 1 1/4 E.

Thence

S. 16 1/2 W. run for a line Pine. To a little Creek 12 ch. 5 lk. wide. A little Creek at 16 ch. 4 lk. wide. Another Creek at 22 ch. 10 lk. wide. To tree 35 ch. The whole of this line passes through a thick chaparal Marked tree with 3 notches both sides. Any quantity of quartz.

Thence

S. 2 1/4 W. run for a large black Pine tree. To tree 66 ch. 25 lk. Marked tree ~~with~~ 3 notches on four sides with a X above each three notches. A little Creek at 17 ch. 5 lk. wide. Another Creek at 44 ch. 58 lk. 20 lk. wide. A white oak 15 in. diameter bears N. 5 1/2 E. dist. 85 lk. A white oak 24 in. diameter bears N 48 1/4 W dist. 75 lk. A black oak 16 in diameter bears S 82 3/4 W dist. 1 ch. 20 lk. Black peak bears N 8 1/4 E. Lone tree on Mount Wright bears S 7 1/2 E.

Thence

S. 4 3/4 E. run for a large black oak. To oak 17 ch. 35 lk. Marked tree 2 chops both sides.

Thence

S. 5 8 1/2 E. run for a white oak tree. To tree 3 ch. 45 lk. Marked tree 3 notches both sides.

Thence

S. 4 8 1/2 E. run for a Pine tree. To tree 18 ch. 40 lk. Marked tree 2 notches both sides. Soil poor Some good white oak timber & Pine.

Thence

S. 28½ E. run for a tall pine tree standing on a high ridge— A road at 21 chs from Aguas Frio to Stockton— Creek at 24 chs 50 lks wide— To tree 56 chs 25 lks marked tree 3 notches on both sides Some tree on Mount Wright bears N 58 E. Peak No 2 Mount Wright bears N 81 E.

Thence

S. 2 E. run for a tall Pine tree— To tree 22 chs 20 lks marked tree 2 notches both sides. Peak No 2 Mount Wright bears N. 70½ E. Peak No 3 Same Mount bears 87¼ E.

Thence

S. 13½ E. run to a Pine tree— To tree 17 chs— marked tree 2 notches both sides— Sand rolling some timber— Chaparral, bushes &c

Thence

S. 20¾ E. run for a large Pine tree. To tree 25 chs marked tree 2 notches both sides.

Thence

S. 35½ E. run for a White oak tree standing just below a pile of granite rock— To a little creek 40 chs 20 lks wide— To tree 82 chs marked tree 4 notches— Some tree on Mount Wright bears N 2¼ E. Peak No 2 bears N 19 E. Peak No 3 bears N. 4½ E. A quartz Mill bears N. 10½ E. distant about ¾ of a mile (Guadaloupe) A quartz vein worked by Mexicans bears N. 2½ W. distant about ½ a mile.

Thence

CASE NO. 1 ND
PAGE NO. 296

S. 30¼ E. run for an oak tree standing on a high ridge a little Creek at 52 ch^s. 6 links wide another Creek at 72 ch^s. 5 lk^s. wide – Another Creek at 93 ch^s. 8 lk^s. wide – To tree 107 ch^s. 80 lk^s. Marked tree 3 notches both sides.

Thence

S. 3½ E. run for a white oak tree standing on a high ridge – To tree 25 ch^s. 60 lk^s. – marked tree 3 notches on both sides – Timber and Soil poor.

Thence

S. 1¼ E. run for a white oak tree standing on the Eastern point of a high ridge Surrounded by large granite rocks. To tree 14 ch^s. 25 lk^s. Marked tree 3 notches both sides – Some bushes and Pine timber & White oak – Peak No. 3 on Mount Wright bears N. 16¼ E.

Thence

S. 1½ E. run to a forked White oak tree – To tree 68 ch^s. 31 lk^s. Marked tree 4 notches both sides.

Thence

S. 58 W. run for a white oak tree – To tree 7 ch^s. Marked tree 2 notches both sides

Thence

S. 4¼ W. run for N. W. Corner of Section No 2 large Pine tree – To tree 31 ch^s. 25 lk^s. – Marked the side came on x and 3 notches.

Note – The lower line of Section No 3 being the upper line of Section No. 2 both Sections having this line in Common – S 75 E 65 ch^s. 20 lk^s. to

9.

place of beginning.

We hereby Certify that we assisted Allen W. Von Schmidt Deputy Surveyor, in Surveying a tract of land known as Las Mariposas and that said tract has been in all respects to the best of our knowledge and belief well and faithfully Surveyed and the boundaries marked according to the instructions furnished by the Surveyor General

James Scott
Enoch Moore
Chainmen

Subscribed and sworn to by the above named persons before me a Justice of the Peace for the City and County of San Francisco and State of California on this 11th day of May 1852

P. W. Shephard
Justice of the Peace

I Allen W. Von Schmidt Deputy Surveyor do solemnly swear that in pursuance of instructions received from Sam'l D. King Surveyor of the Public Lands of the United States in the State of California 31 March 1852, and in strict conformity to the laws of the United States furnished by the said Surveyor General – I have faithfully Surveyed

the Exterior boundaries of a tract of land known as Las Mariposas in said State, and do further Solemnly Swear that the foregoing are the true and original field notes of such Survey.

Alleny W. Von Schmidt
Deputy Surveyor

Subscribed by said Alleny W. Von. Schmidt Deputy Surveyor and sworn to before me a Justice of the Peace for the City and County of San. Francisco California

P. W. Shephard
Justice of the Peace

U. S. Sur. Genl. Office
San. Francisco Cal. 6th August 1852

The foregoing and hereunto attached fifteen pages contain a copy of the field notes returned to and on file in this office which have been approved.

Signed { Sam. D. King
Sr. Genl. Co.

CASE NO. 1 ND
PAGE NO. 293

I George Fisher Secretary of the Board of United States Commissioners to ascertain and settle private Land Claims in the State of California hereby certify that the foregoing is a full true and correct Copy of a paper on file among the Archives of said Board and in my care and Custody as such Secretary.

Witness my hand this
26th day of November 1853

Geo: Fisher

Secy

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

CASE NO. 1 ND
PAGE NO. 300

The United States of America vs John C Fremont

Appeal from the final decision of the Commissioners to ascertain and settle private land claims in the State of California &c.

Comes now the said John C Fremont by his attorney, and the United States, by their attorney, also Come: And the opinion and mandate of the Supreme Court of the United States having been filed in this court, duly authenticated under the Seal of said Supreme Court, and certified by the Clerk thereof, whereby it appears that at the December Term of said Supreme Court, of the year of our Lord One thousand eight hundred and fifty four, that is to say, on the 10th day of March 1855. Upon the appeal by the said John C Fremont from the decree of this Court reversing the decision of the said Commissioners. and holding invalid and rejecting the claim of the said John C Fremont. (the said appeal having come on to be heard before the said Supreme Court upon the transcript of the record of this Court) the said Supreme Court rendered and pronounced a judgment and decree in the following words to wit:

CASE NO. 1. ND.

"It is the opinion of this Court that

the claim of the petitioner to the land as described and set forth in the record is a good and valid claim. — Whereupon it is now here ordered, adjudged and decreed by this Court that the decree of the said District Court in this cause be, and the same is hereby reversed, and that this cause be and the same is hereby remanded to the said District Court for further proceedings to be had therein in conformity to the opinion of this Court."

It is therefore ordered, adjudged and decreed by this Court, (in conformity to the said opinion, judgment and decree of the said Supreme Court) that the said decree of this Court be, and the same is hereby in all things reversed, annulled, and set aside;

~~And~~ It is ~~further~~ ordered, adjudged and decreed by this Court, ~~in like manner~~ that the claim of the said John C Fremont to the lands, as described and set forth in the record, is a good and valid claim, and that the said claim be and the same is hereby confirmed, to the extent of Ten Square Leagues, the quantity specified in the original grant set forth in the record, and within the limits therein mentioned. upon vacant land within the boundaries as described and set forth in the record to be located by a survey made under the authority of the United States and in the form and divisions prescribed by law for surveys in California, embracing the entire grant as one tract.

CASE NO. 1 ND
PAGE NO. 302

To,

S. W. Inge Esq.

U. S. Dist Atty &c.

Please take notice that on the 8th day of June 1855, at the opening of the District Court of the United States for the Northern District of California, the said John C Fremont will move the Court to enter a decree in accordance with the foregoing draft.

Respectfully.

Lockwood Tyler & Wallace

For John C Fremont.

June 4th 1855

CASE NO. 1. ND.

CASE NO. 1 ND
PAGE NO. 303

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

The United States of
America
vs
John C Fremont.

Draft decree.

The United States
vs
John C. Fremont

CASE NO. 1 ND
PAGE NO. 304

Inge –

The only question is whether Juan Alvarado – had on the change of sovereignty any valid claim to a segregated portion of the public domain known as Mariposas –

18th Feb. 1844 Alvarado petitioned setting forth the fact that he had not enough land for his cattle. setting forth his boundaries – the grant was on the usual conditions –

The grant was is a mere equity. It is not alleged that he has performed a single condition – the excuse is that it was located on wild country infested by Indians

U. S. v. Kingsley
U. S. v. De Pilemont

The dangers were as well known and existed as much previous to the grant — as after —

2

There is no juridical survey – it is admitted that the boundaries embrace at least 100 sq. leagues – Gen. Vallejo

CASE NO. 1. ND.

testified it contains 30 sq. leagues
Even if the grantee could have
selected his 10 leagues by Mexican
usage he has not done so—
So if a usuage existed
Allowing the Governor to extend the
time for settling when presented
by Indians has it is immaterial for
he never tried to settle— He never
was on the land at all.
As to map. U. S. v. Forbes.

U. S. v. Acosta. 1. How. —
Howard—

The genuineness of the grant not disputed—
2 questions —
1. Have we a good legal boundary
when does the grant begin— Have
we a starting point.

As to performance of conditions

Inge

CASE NO. 1 ND.
PAGE NO. 306

The true question is what was al varados title on 7th July 1846 or 30th May 1848— The last is the earliest date we can adopt— it is the date of the ratification— which date we adopt is immaterial for nothing material was done in the intival

The question as to boundaies is whether the land was is capable of being run off by a surveyor.

But the true question is was the land segregated at the date of the treaty.

We have under the name of Los Mariposas 4 or 5 distinct tracts of land

The calls of the grant are obvious but they embrace more than 100 sq. leag. He does not claim this tract

His own petition claims the 2d tract a valley watred by a streame called "Los Mariposas"— as described in a map annexed to the petition— The tract in the map stops short of the San Joaquin 40 or 50 miles— this he says has long been known as Los Mariposas—

But this is not described at all in the grant— It might have been segregated by juridical survey—

ASE NO. 1. ND.

CASE NO. 1 ND
PAGE NO. 307

The principle laid down is that unless the grant is sufficiently accurate the survey must be made in aid of the grant

U. S. v. Acosta 1. How.

U. S. v. Boisdoré. 11th How.

U. S. v. Forbes 15. Peters 182

It has been intimated that the survey could have been made at any time soon after the change of sovereignties—

But when this allowed it has been in virtue of the Treaty of Washington giving claimants the full time after the ratification to ~~perfect them~~ fulfill the conditions of their grant.

U. S. v. Kingsley 12 Pet. 483

As to Indian hostilities

De Vilemont. XIII How.

CASE NO. 1. ND.

all = 143

sup 74 - 56 = 22

sub -

110 - 134 — 14