

CASE NO.

51

NORTHERN DISTRICT

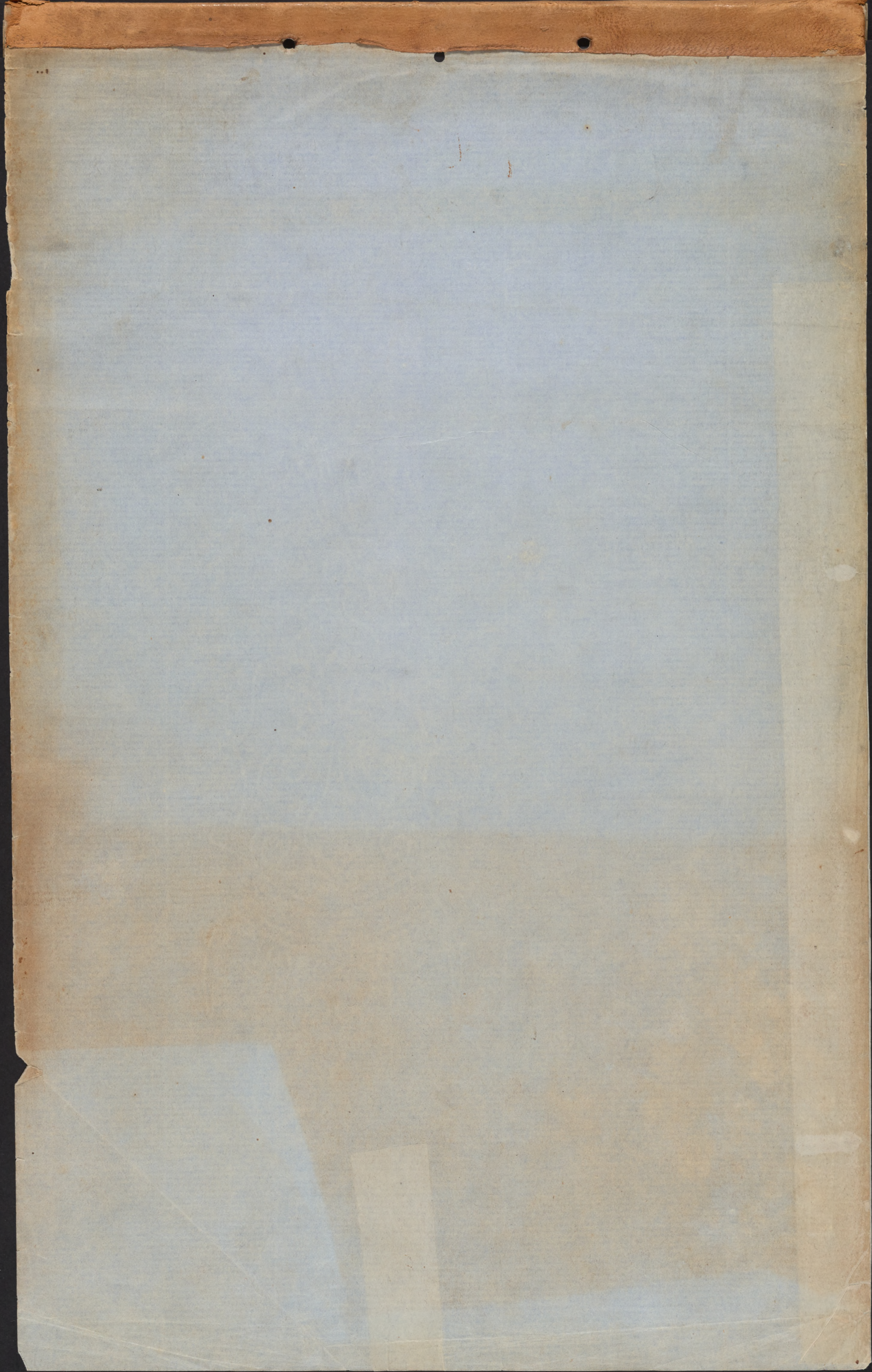
HONCUT GRANT

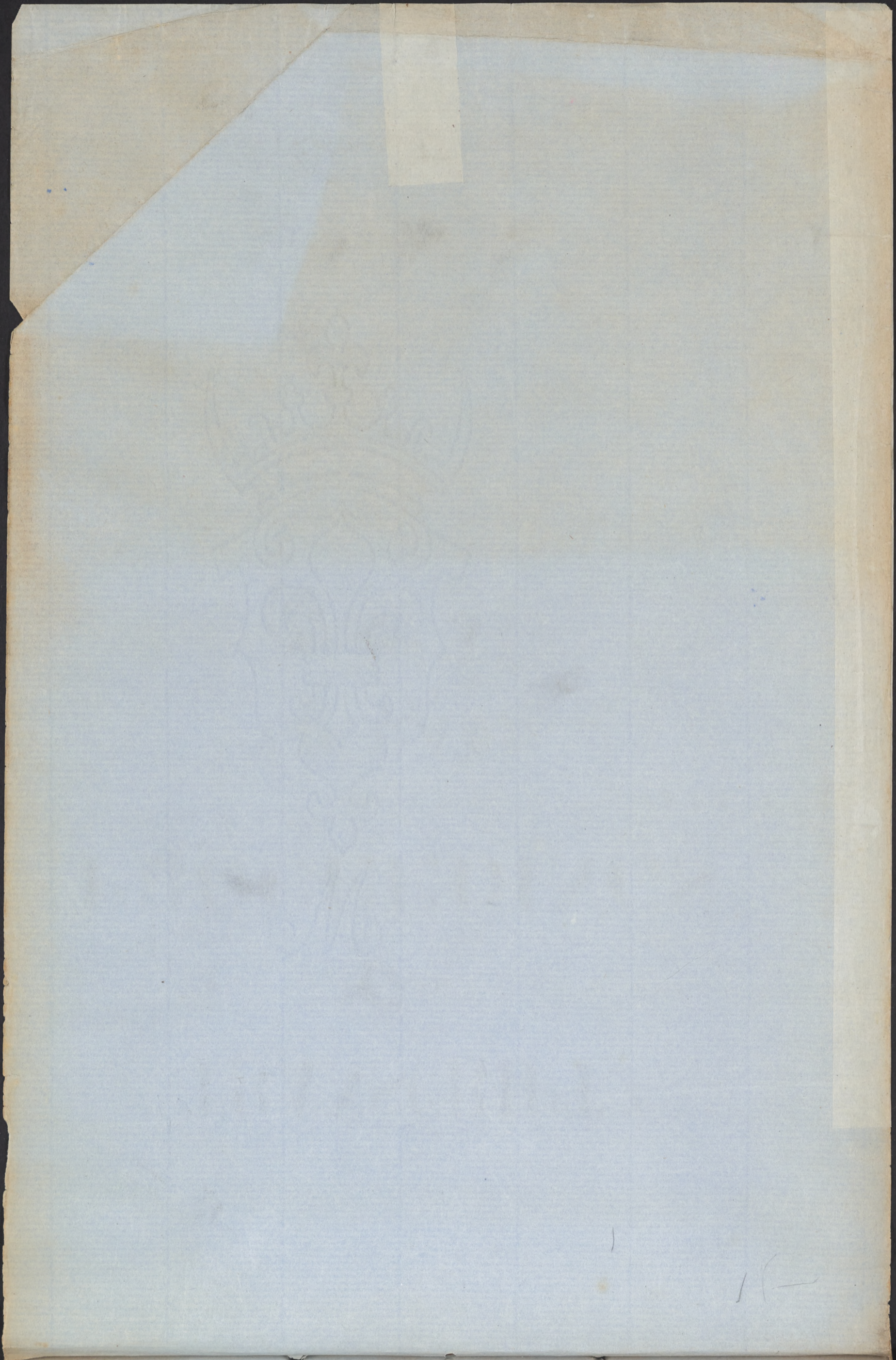
HENRIQUE HUBER

CLAIMANT

LAND CASE 51 ND 173 pgs.

Pilover Bond
52% Cotton Fiber
U.S.A.





CASE 51 ND

PAGE 1

TRANSCRIPT

OF THE

PROCEEDINGS

IN CASE

NO. 159

Henrique Huber

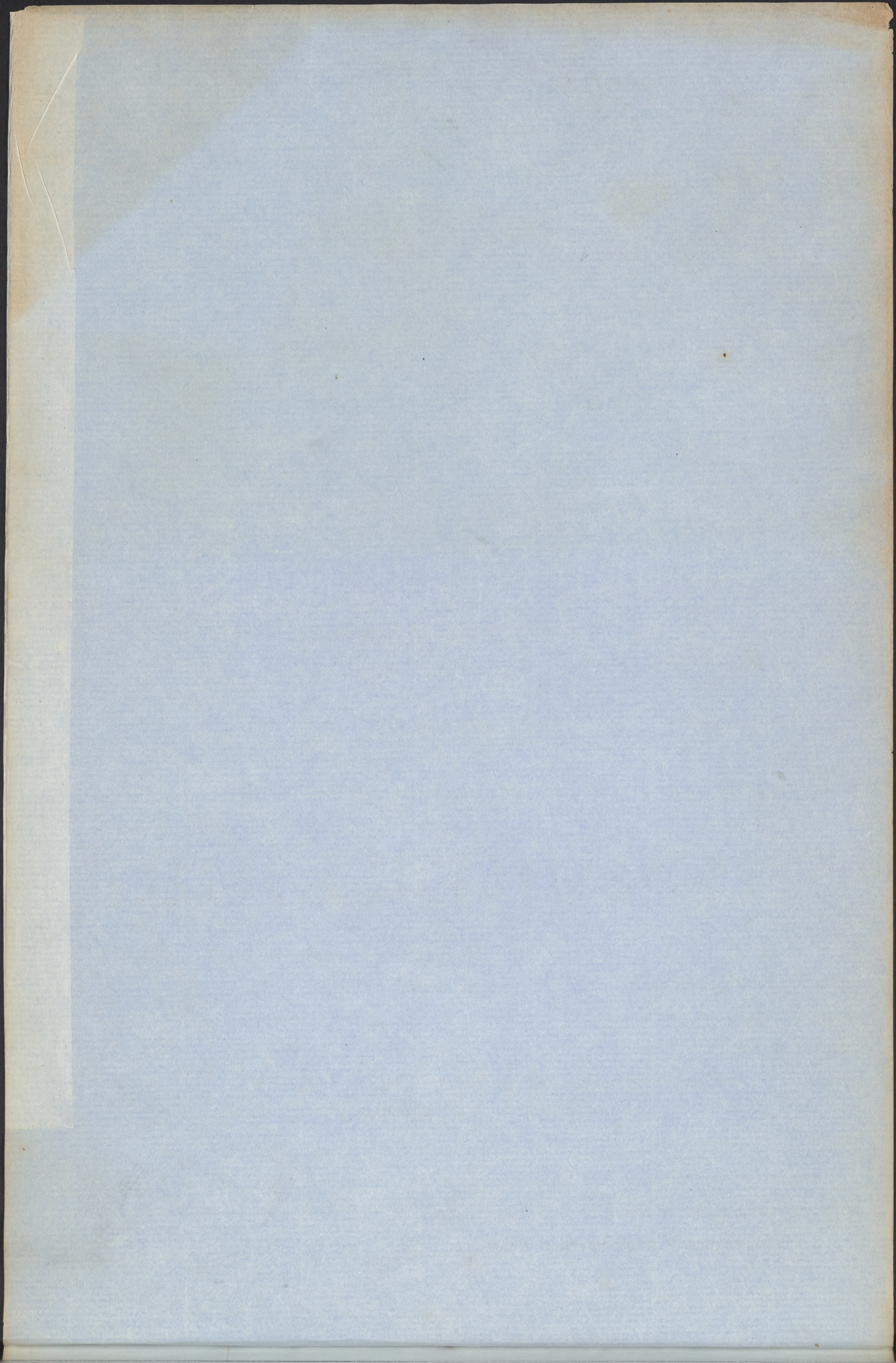
CLAIMANT

VS.

THE UNITED STATES, DEFENDANT,

FOR THE PLACE NAMED

"Honcut"



Office of the Board of Commissioners,

To ascertain and settle the Private Land Claims

IN THE STATE OF CALIFORNIA.

CASE 51 ND

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Be it Remembered, that on this *fifth day of April*, 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 *Enrique Huber*

for the Place named

was presented, and ordered to be filed and docketed with No. 159 and is as follows, to wit;

(Vide page 3 of this Transcript.)

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

San Francisco May 3^d 1852

In case No 159, Enrique Huber, the deposition of Juan de Costareda, a witness in behalf of the Claimant taken before Commissioner Hiland Hall, was filed and is in the words and figures as follows, to wit: (Vide page 8 of this Transcript.)

San Francisco May 13th 1852

In case No 159, Enrique Huber, the deposition of John A Sutter, a witness in behalf of the Claimant taken before Commissioner

James Wilson was filed and is in the words and figures as follows to wit: (Vide page 7 of this Transcript.)

San Francisco May 17th 1852.

In case No 159, Enrique Huber, the deposition of Theodore Cordua, a witness in behalf of the Claimant, taken before Commissioner Harry J. Thornton, was filed and is in the words and figures as follows to wit: (Vide page 9 of this Transcript)

Los Angeles September 3^d 1852

In case No 159, Enrique Huber, for the place called "Honcut" the parties litigant filed the following stipulation relative to placing this case on the trial docket, which is as follows to wit: (Vide page 20 of this Transcript)

Los Angeles September 3^d 1852

The following case was ordered to be placed on the Trial docket subject to the stipulations filed by the parties litigant to wit: No 159. Enrique Huber. "Honcut."

San Francisco Jan. 28th 1853.
 Case no. 159 Enrique Huber, for the place named
 "Honcut", called: The counsel for the claimant
 Mr. Halleck, read the papers in evidence, and
 his brief: Answered by the U.S. Associate Law
 Agent: Case submitted and taken under advisement
 by the Board.

San Francisco April 22^d 1853.
 Commissioners Nelson Hall and Wm. J. Thornton
 returned to the Secretary the papers appertaining
 to Case no. 159 Enrique Huber, for the place
 named "Honcut" and others: after which
 act pursuant to the notice in the National
 Intelligencer, stating their removal from
 office they withdrew and ceased to act as
 members of this Board.

San Francisco July 11th 1853.
 Case no. 159, on motion of the United States
 Law Agent, was ordered to be placed on the
 Trial docket.

San Francisco July 28th 1853.
 Case no. 159 Enrique Huber for the place
 named "Honcut", called: The counsel for the
 claimant read the papers in evidence, and
 opened the argument: followed by the United
 States Law Agent, and concluded by the claimant's
 counsel - Case submitted and taken
 under advisement.

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San Francisco Oct. 12th 1853.

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In case no. 159 Eugene Decker for the place called "Honcut," Commissioner Thompson Campbell, delivered the opinion of the majority of the Board respecting the claim, and the decree of final rejection:

For opinion vide page 21 of this Transcript)

For decree vide page 72 of this Transcript)

In the same case Commissioner Robert A. Thompson delivered his opinion dissenting in some points from the opinion of the majority of the Board, but concurring in the result:

(vide page 71 of this Transcript)

Petition of
Eusebio Huber
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To the Honorable Commissioners to settle Private Land
Claims in California

The petitioner Eusebio Huber respectfully shows. That
On the eleventh day of February A.D. One thousand
Eight hundred and forty five, Micheltorena Govern
or of the California by virtue of the Authority of his
Office granted to the petitioner the tract of land know
n by the name of "Simcut" situate in the then jurisdic
tion of Sacramento, and in the now Counties of Yuba
and Butte, containing Eight square leagues, a little
more or less with the boundaries set forth in the grant
and sheets in the accompanying grant; Copies of which
grant and map are thereto annexed Marked A with
a translation Marked B.

That on the Fourteenth day of May A.D. One thousand
Eight hundred and forty five he applied to the proper
Judicial Authority for judicial possession which
was given him on the fifteenth day of the same mon
th and year; Copies of which petition and order of Court
and annexed hereto marked C with translations
marked D.

That the said land has not been surveyed by the
Surveyor General of the United States, but that its
position and limits, are well defined in the grant
itself, and the accompanying map.

That he knows of no interfering claims.

That he has done and performed in the due form
of Law all the requirements of said grant necessa
ry to make the grant as near as full perfect and
absolute.

The petitioner relies for confirmation of title upon
the Original papers Copies of which are here to
Annexed, upon the Documents and minutes concern
ing the same in the Archives in the Charge of the
Surveyor General and such other proofs as he
may be advised are necessary -

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Wherefore he prays the Commission to decide upon
the validity of said grant to the petitioners and to confirm
in the same

By his attys
Hallack Peachy & Billings

Filed in of April 5th 1852

Geo. Fisher Secy

Deposition of
J. A. Sutter

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Case No 159. In Confirmation of Patent
Board of Commissioners to
ascertain and settle private Land claims in California

On this 13th day of May A.D. 1853 came before
me James Wilson One of said Commissioners - John A
Sutter, a witness offered by Ecceque Huber the
petitioner. The said witness being duly sworn gave
the following testimony in said case -

Geo. Cooley Law Agent of the United States was
notified and did attend the taking the testimony
of said witness and did not object

John A Sutter a witness introduced by the petitioner
in the above case in answer to questions by the
Petitioner says - That the paper now shown to me
which bears my signature and seal and is the
Original of which of which paper marked Exhibit
A in the files of this case is a Copy, is a genuine
Original paper and my signature and seal thereto
is my true signature and seal. I have compared
said Original paper with the Copy as appears in
paper marked Exhibit A and find said Exhibit to
be a true Copy, my seal and signature was put to
said Original paper at the time it purports to bear
date

J. A. Sutter

Filed in Office May 13th 1853

Geo. Fisher

Sey

Office of the Board of Commissioners of California Land Claims.

San Francisco May 3^d 1852

Deposition of Juan de Castaneda.

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On this day before me Silas Hall one of the Commissioners for ascertaining and settling land claims in the State of California came Juan de Castaneda a witness produced in behalf of the claimant Enrique Huber, whose petition is number 159 on the Doct of the Board. His evidence being given in the Spanish language was interpreted by the Secretary. The law agent was notified and was present.

In answer to questions propounded by the Counsel for the petitioner the witness testified as follows
My name is Juan de Castaneda, my residence Sonoma I have resided in California since 1838 and I am forty five years of age.

A paper now shown me purporting to be a petition of Enrique Huber for a grant of land with a map accompanying the same and a grant of the land dated Feb'y 11. 1845 is a genuine paper. The grant is in my hand writing and signed by me as Secretary pro tem. It was signed by Geo Michetto in my presence.

The signatures were affixed at the date which the grant bears. I have compared the said original papers with Exhibit A filed in this case and find it to be a true copy. That Jimeno was the proper person to make register of this title in the proper book. That they were in Campagna at the time, and that he does know ^{not} at what place the petition was presented to the Governor but that the title was issued at Santa Barbara.

Sworn and subscribed } J. de Castaneda
before me }
Silas Hall Comr }

Filed in of Office May 3^d 1852 Geo Fesher Secy

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Office of the Board of Commissioners
California Land Claims San Francisco

May 17th 1852

Deposition of
Theodore Cordua

CASE 51 ND

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On this day before me Henry J. Thornton one of the Commissioners for ascertaining and settling private land claims in the State of California came Theodore Cordua a witness produced in behalf of the Claimant Henry Huber whose petition is No. 159 on the docket. And was duly sworn. The Law Agent was notified and did attend.

1st Question by Claimant

What is your name age and place of residence
Answer. My name is Theodore Cordua my age is about 54 years. I now reside in Napa Valley. I have resided in California about ten years.

2nd Question. Do you know the Rancho of Amecut claimed by Henry Huber and if so, what do you know about the Occupation of this land.

Answer. I know the Rancho called "Amecut" claimed by Henry Huber, it is situated on the Feather River. In September or October 1845 I leased of Mr Huber the Claimant the part of this Rancho lying between the Feather and Yuba rivers for the term of six years.

The lease expired in September or October 1851. In that lease I bound myself to build a house and corral on the land, which were to become the property of Mr Huber at the expiration of the lease. I hired John Boutish Baile to build the house and corral ^{on the land} and paid him for the work. They were built in 1846. I don't remember the exact date. I had cattle and horses on the Rancho in 1845-1846-1847-1848 & 1849.

I had as many as 4 or 5 thousand head on the Rancho, in 1849 I sold a part of the cattle, and the remainder in January 1850. The house and corral which I built for Mr Huber were standing last year, and I suppose are still standing. They were built on Feather River about 3 miles below the mouth of the Amecut.

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3^d Question. Have you the lease which you made with Mr Huber

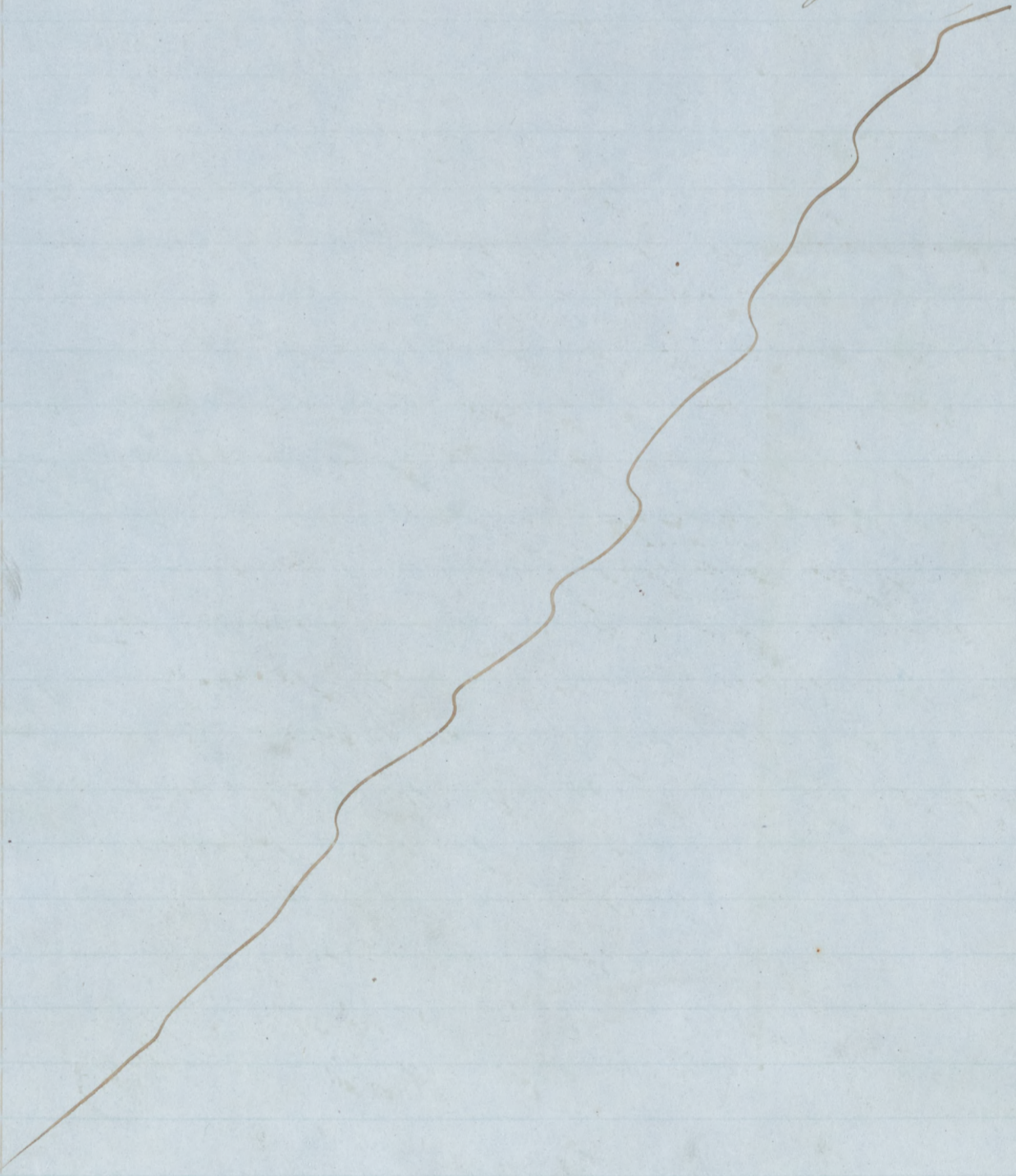
Answer. I have not, it was burnt up when my tent was burnt in May 1850. Mr Huber had his things in my tent when it was burnt in 1850. and they were burnt too. I understood that his copy of the lease was burnt at the same time

The U.S. Law Agent acknowledges notice & declines putting any crop interrogatories
Sloan to and subscribed before me this 17th of May 1852

Henry J. Thornton Comr. &c

Filed in Office May 17th 1852

Geo. Fisher Secy



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Excmo. Sor. Gobernador

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Enrique Huber Mexicano por natura-
leza a V. E. Como mejor haya en de-
recho espone; que teniendo un numero
de ganado vacuno y Caballas, de cuyos
productos susiste, y necesitado un ter-
reno competente donde ponerlos, solicite
de V. E. se sirva concederle el que se
Comprende en el diseño adjunto cons-
tante de ocho sitios de ganado mayor poco
mas o menos, siendo situado entre los Rios
Yuba y Plumas, y atravesando esta ul-
tima media legua de ancho y dos leguas
de largo al pie de la Sierra Nevada.

Por tanto a V. E. Suplica se
sirva concederle esta gracia y mandar
se le entienda el titulo correspondiente
de que vivira' reconocido

Embarcadero del Sacramento
Octubre 7 de 1844

Enrique Huber



Here follows a map

Excmo. Sr. Gobernador

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Enrique Huber Mexicano por naturalidad a V.E. Como mejor haya en derecho espone; que teniendo un numero de ganado vacuno y Caballar, de cuyos productos susiste, y necesitado un terreno competente donde ponerlos, solicite de V.E. se sirva concederle el que se comprende en el diseño adjunto constante de ocho sitios de ganado mayor poco mas o menos, siendo situado entre las Rias Yuba y Plumas, y atravesando esta ultima media legua de ancho y dos leguas de largo al pie de la Sierra Nevada

Por tanto a V.E. Suplica se sirva concederle esta gracia y mandar se le estienda el titulo correspondiente de que vivira escocido

Embarcadero del Sacramento
Octubre 7 de 1844

Enrique Huber



Sello Primera Ocho Pesos

Habilitado provisionalmente por la Aduana Marítima del Puerto de Monterrey, 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

2 El Ciudadano Manuel Micheltorena General de Brigada del Ejército Mexicano Ayudante general de la Plana Mayor del mismo, Gobernador, Comandante General e Inspector de ambas Californias

3 Por Cuanto D. Enrique Huber, Mexicano naturalizado, ha solicitado para su beneficio personal y el de su familia el terreno baldío que hay entre los rios de Yuba y Plumas atravesando parte el de este ultimo nombre al pie de la Sierra Nevada y cuyos linderos se demarcan en el diseño adjunto; practicadas previamente las diligencias y averiguaciones concernientes, segun lo dispuesto por las leyes y reglamentos de la materia; mando de las facultades que me son conferidas a nombre de la Nacion Mexicana, he venido en concederle el expresado terreno, declarandole la propiedad de el por las presentes letras entendiendose dicha concesion con entera conformidad a las leyes, bajo las condiciones siguientes,

1^a Podrá cercarlo sin perjudicar las travenas caminos y servidumbres, lo disputara libre y tranquilamente, destinandolo al uso o cultivo que mas le acomode.

2^a Solicitara del juez respectivo le de posesion juridica en virtud de este

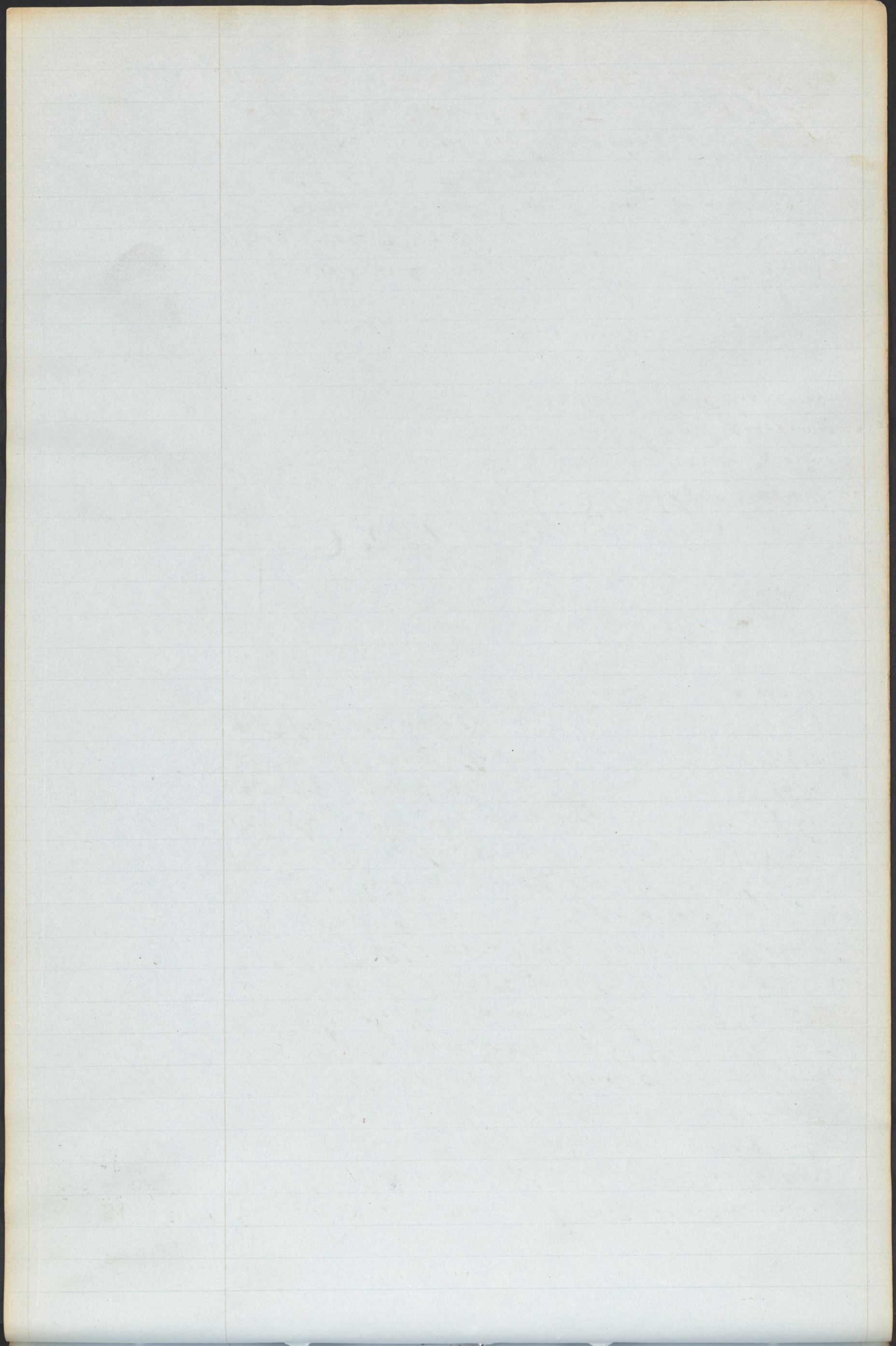
despacho, por el cual se demarcaran los
 linderos, y pondrá las mojones de estilo.
 2ª - El terreno de que se hace donación
 es de ocho sitios de ganado Mayor, más
 o menos, según se demuestra en
 el diseño que corre adjunto en el es-
 pediente. El juez que le diere la posi-
 sión lo hará medir conforme a ordenan-
 za, quedando el sobrante que resulte
 a la Nación para los usos convenientes

En consecuencia mando que tenien-
 dose por firme y válido este título
 se tome razón de él en el libro que
 corresponde y se entregue al interesa-
 do para su resguardo y demás fines.
 Dado en Santa Barbara a los once
 días del mes de Febrero de mil ocho
 cientos cuarenta y cinco.

Manl. Michelle

J. de Castañeda
 Seco ynto.

Filed in Office May 3^d 1852
 Geo. Keith
 Secy.



To His Excellency the Governor

Translation of title
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Enrique Huber a Mexican by naturalization, in the most legal manner makes representations to your Excellency that owning a number of neat cattle and horses, by the produce of which he subsists and being in want of a fit land on which to place them he prays your Excellency be pleased to grant him that which appears on the annexed map consisting of Eight Sitios de ganaderia mayor (eight square leagues) a little more or less, situated between the Yuba and Feather rivers, a portion of it half a league wide and two leagues long, being on the opposite bank of the latter (river) at the foot of the Sierra Nevada. He therefore prays your Excellency be pleased to grant him this favour and order that the corresponding title be issued which he will gratefully remember.

Embarcadero de Sacramento
Octoba 7th 1844
Signed Enrique Huber

Stamp Just Eight Dollars

Provisionally authorized by the maritime Customhouse of the port of Monterey in the Department of the Californias for the years One thousand Eight hundred and fifty four and One thousand Eight hundred and fifty five
(Signed) Micheltona. (Signed) Pablo de la Fuente

Citizen Manuel Micheltona General of Brigade of the Mexican Army. Adjutant General of the Staff of the same Governor Commanding General and Inspector of both Californias
Whereas Don Enrique Huber a Naturalized Mexican has for his own personal benefit and that of his family, petitioned for the vacant land which there

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 is between the Yuba and Feather rivers, a part of it
 passing the latter river at the foot of the Sierra Nevada
 and the boundaries of which are shown in the accom-
 panying map, the proper measures and examinations
 being previously made, as required by law and
 regulations of the matter, using the faculties conferred
 on me in the name of the Mexican Nation I have
 granted him the agnosca lance declaring to him
 the ownership of it by these presents, said grant being
 understood to be in entire conformity with the laws
 under the following conditions viz:

1^o He may enclose it without prejudice to the crops
 roads, roads and servitudes and enjoy it freely
 and exclusively, making such use and cultivation
 of it as he may see fit.

2^a He will select the proper magistrate to give him
 judicial possession in virtue of this Order, by whom
 the boundaries will be marked, and he shall place
 the usual bounds

3 The land granted in donation contains Eight litros de
ganado mayor (Eight square leagues) a little more
 or less as shown by the map which goes annexed
 to the Expediente. The Magistrate who may give
 the possession, will cause it to be measured in confor-
 mity with the Ordinance, leaving the surplus which
 may result to the nation for its convenient
 uses

In consequence I order that this title being held as
 firm and valid, note be taken of it in the corres-
 ponding book and it be delivered to the party
 interested for his security and other purposes
 Given in Santa Barbara on the Eleventh day of
 the month of February One thousand Eight hundred
 and Fifty five.

(Signed) Manuel Michelmore

Signed Juan de Castaneda. Secretary ad interim

Filed in office
 April 5th 1852

Geo. Fisher Secy

I certify the foregoing to be a true and correct translation from the
 Original Spanish document - On file in this Office annexed to the
 deposition of Juan de Castaneda in Case No. 159. Henrique Huber
 Geo. Fisher Secy

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Señor Juez de Paz

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Doc J. W
aux d to Depo
of John A.
Lutter ~

6

Enrique Huber vecino de esta jurisdiccion
dueno del rancho Horizont Como mejor
lugas haya en derecho, ante V. pasesco
y digo: Que Como consta el titulo que
presento con la solemnidad y juramento
necesario, tengo en my Rancho ocho sitios
de ganado mayor poco mas o menos de
bajo de los linderos del titulo que acom-
paña y p. q. merito p. q. en todo tiem-
po consta, hasta donde llegan y si me
perjudican o perjudico alguno de mis
circunvecinos, se sirviera V. mandar que
presidiendo las diligencias acostumbra-
das de identidad vista de ojo y Econo-
simiento se sirva V. ponerme en posse-
sion de dichas tierras — Por tanto —
a V. suplico q. habiendo por pre-
sentado dicho documento, se sirviera man-
dar, como llevo pedido hecho que sean,
se me devuelvan dichas Con las
diligencias originales q. se hicieron. Pa-
ra en guarda me derecho esta escrito y
todo lo necesario

Rancho de Hock
Mayo 14 de 1845
Enrique Huber

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En el distrito de Sacramento y
en el mismo dia mes y año yo el
Juez actuando por Exceptoria mando
de ponga en posesion mañana
a las diez de la mañana a D. En-
rique Huber del terreno que segun
documento ejecutado en Santa Bas-
bara con fecha 11 de Febrero de 1845

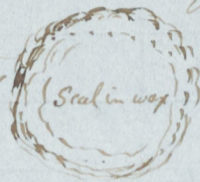
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de ocho sitios de ganado Mayor que
se me ha presentado y delimitado de los
Eios Yuba y Plumas y del pie de la
Sierra Nevada, pasando el Rio de Plu-
mas al pie de la Sierra Nevada me-
dia legua, de ahí corriendo para aba-
jo dos leguas en la misma direccion
del Eio Plumas y de ahí media legua
en linea recta hasta este ultimo Eio.
Asi lo provey, mande y firme

J. A. Sutter



Filed in Office May 13th 1852
Geo. Fisher
Secy.

14 D
Translation of
Jurisdictional possession

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To the Justice of the Peace

Enrique Huber a resident
of this jurisdiction and owner of the Rancho of Soncut
before you in the manner most conformably to law,
appears and says, that as appears by the title which
he presents with the necessary oath and formalities, his
Rancho contains eight sitios de ganado mayor (Eight
square leagues) a little more or less within the boundaries
mentioned in the accompanying title, and as it is
necessary for him that it should appear in all future
time, what are the said boundaries, and whether he
prejudices his neighbors or they trespass on him [he
requests] that you will have the goodness to order that
the usual examination of identity, view and recogni-
tion being previously made, he be put in possession
of said lands

He therefore prays that this document being admitted,
you will have the goodness to direct as he has requested
and when the examinations aforesaid have been made
to return the same to him with the original documents
which may be made, this writing and all other things
which may be necessary for the security of his
rights.

Rancho of Rock

May 15th 1845

Signed Enrique Huber

In the District of Sacramento and on the same day
month and year. The Magistrate acting as a Notary
in virtue of my office, Order that tomorrow at ten
O'clock in the morning, Don Enrique Huber be
put in possession of the land which [belongs to him]
as shown by a document which has been presented
to me, executed in Santa Barbara dated February
11th 1845 for eight sitios de ganado mayor (Eight
square leagues) bounded by the Yabu & Feather
rivers by the foot of the Sierra Nevada, passing
Feather river half a league, thence running down
in the same direction as the river two leagues and

thence half a league in a right line to the same river
I thus directed Ordered and Signed

(Signed) J. A. Sutter Seal

I certify the foregoing to be a true and correct trans-
lation of the Original Spanish document on file in
this Office and annexed to the Deposition of John A. Sutter
in Case No. 159 Huerfano River

Geo. Fisher Secy

Filed in Office April 5th 1852

Geo. Fisher Secy

We agree that the above entitled cause be put
Stipulation, on the Trial Docket, with the stipulation which
is hereby entered into, that either the Law
Agent or the Claimant may introduce fur-
ther testimony previous to the argument of the
case.

(Signed) Mallick, Peachy & Billings,
Attys for Claimants,

(Signed) Geo. W. Crosby,
W. J. Law Agent,

Filed in Office Sept 3rd 1852

(Signed) Geo. Fisher,
Secy.

A. (21)

Enrique Huber

vs

The U. States

} Amcult
} In eight square leagues in County.

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Opinion

The claim in this case is founded on a petition and grant. The petition is as follows.

To his Excellency the Governor
Enrique Huber a Mexican by Naturalization, in the most legal manner makes representation to your Excellency that owning a number of neat cattle and horses, by the produce of which he subsists, and being in want of a fit land on which to place them he prays your Excellency be pleased to grant him that which appears on the annexed map consisting of eight square leagues, a little more or less situated between the Yuba and Feather rivers a portion of it half a league wide two leagues long on the opposite bank of the latter (river) at the foot of the Sierra Nevada. He therefore prays your Excellency be pleased to grant him this favor and that the corresponding title be issued which he will gratefully remember

The foregoing petition is signed by the claimant whose signature is proved to be genuine and bears the 7th of October A.D. 1845

On the 11th day of February 1845 the following document was issued by the Governor "Whereas Don Enrique Huber a Naturalized Mexican has for his own personal benefit and that of his family petitioned for the vacant land, which there is, between the Yuba and Feather rivers a part of it passing the latter river at the foot of the Sierra Nevada, and the boundaries of which are shown in the accompanying map; The measures and emanations being previously made as required by law and regulations on the matter, using the faculties conferred on me, in the name of the Mexican Nation

I have granted him the aforesaid land, declaring to him the Ownership of it by these presents, said grant being understood to be in entire conformity with the laws, under the following conditions viz:

1st He may enclose it without prejudice to the crop roads roads and servitudes, and enjoy it freely and exclusively making such use and cultivation of it as he may see fit

2^d He will select the proper Magistrate to give him judicial possession, in virtue of this order, by whom the boundaries will be marked out, and he shall place the usual bounds.

3. The land granted in donation contains Eight sitios de ganados Mayas (Eight square leagues) a little more or less as shown by the map which you annexed to the expediente. The magistrate who may give the possession will cause to be measured in conformity with the ordinance, leaving the surplus that may result to the nation for its convenient uses.

In consequence I order that the title being held as firm and valid, note be taken of it in the Corresponding Book and it be delivered to the party interested for his security and other purposes.

The foregoing document is signed by Manuel Michetorena whose signature is proved to be in his hand writing on the 14th day of May 1845 Enrique Staba the present Claimant, made his application to J. A. Lutter a Justice of the peace, to be placed in possession of said land and in which he states that "as it is necessary for him that it should appear in all future time, what are the said boundaries and whether he prejudices his neighbors or they trespass upon him (he requests that you) the Justice of the peace) will have the goodness to order that the usual examination of identity, view

and recognition being previously made to be put in possession of said lands" On the same day J. A. Sutter the Justice of the Peace to whom the above petition was directed, made the following order: "In the district of Sacramento and on the same day month and year of the magistrate acting as a Notary in my virtue of my office, order, that to-morrow at ten o'clock in the morning, Don Enrique Huber be put in possession of the land which (belongs to him) as shown by a document which has been presented to me, executed in Santa Barbara, dated February 11th 1845 for eight sitios de ganado mayor (eight square leagues) bounded by the Yuba and Feather Rivers, by the foot of the Sierra Nevada, passing Feather River half a league thence running down in the same direction as the river two leagues, and thence half a league in a right line to the same river. The above document is signed by J. A. Sutter whose signature is proved to be genuine. The foregoing documents constitute all the paper title produced by the claimant in this case. There is no evidence, that the grant received the approval of the Departmental Assembly, and no evidence that the Order of the Justice of the Peace for judicial possession was ever executed. The Counsel for the claimant insist that the title established by the foregoing document is a perfect legal title and has fully transferred the fee in the land from the Government of Mexico to the claimant and as such they ask that the same may be confirmed to him Before I proceed to the examination of the questions arising in this case I deem it proper to first ascertain the extent of the powers which the law has conferred on this Board of Commissioners - All the authority which this Board of Commissioners possess is derived from an act of Congress entitled

before them shall be governed by 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^{as far} as they are applicable. The rules established for the government of the Board by the provisions of the Section just quoted together with other parts of the law, leave no room for doubt or speculation as to the character of the tribunal created by Congress for the purposes expressed in the law. All the powers which this Board of Commissioners are permitted to exercise are purely judicial unmingled with political attributes of any kind. With this understanding of the jurisdiction conferred and the nature and class of claims we are authorized to hear and determine I will proceed to the examination of the case now under consideration. The first question which presents itself is, does the evidence submitted make the claimant the holder of a perfect title under the laws and regulations of the Government of Mexico from which the claim is derived. A decision of this question involves an examination of the laws and regulations by authority of which the grant was made and the acts necessary to be done in order to divest the government of the legal title and vest it in the claimant. The Governors of the Territories derived all their authority to make grants of the public domain from the regulations of November 3rd 1825 which were issued by the President of the Republic to whom the Mexican Congress by the law of the 18th August 1824 had confided the whole power and duty of colonizing the lands of the Mexican territory situated in the territories. The second Article of these regulations prescribed the course to be pursued by every person soliciting lands for the purposes expressed

in the first Article, which is by petition to the Governor. This petition is required to contain statements which are clearly specified in the same Article. The 3rd Article prescribes the duty of the Governor, and requires him to take immediate action on the petition in the way of obtaining necessary information & before he accedes to the prayer of the petitioner. The 4th Article provides that after the proper information has been obtained by the Governor will accede or not to said petition in exact conformity to the laws on the subject and especially to the before mentioned one of the 18 August 1834. The 5th Article provides that no grant made to families or single persons shall be held definitively valid without the previous consent of the Territorial Deputation, to which and the respective documents shall be forwarded to it. And in all grants made to Empresarios the 7th Article requires the additional approval of the Supreme Government before the grant is made definitively valid. The 8th Article of said regulations provides for the delivery of the final document to the party which is to have him as a title and is in the following words: "The definitive grant asked for being made, a document signed by the Governor shall be given, to serve as a title to the party interested, where in it must be stated that said grant is made in exact conformity with the provisions of the laws in virtue whereof possession shall be given. The several acts the several acts required by the law are, first: The petition - second: Conception by the Governor - third, the approval of the territorial deputation and fourth the final document - signed by the Governor and delivered to the party - The first question which presents itself is whether a concurrence of all the several acts and circumstances prescribed in the law is necessary to entitle to the

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granted the fee to the land described in his grant. The Supreme Executive of Mexico did not see fit to confide the whole power of granting the public domain situated in the territories to the Governors of those territories, but very wisely divided the responsibility between the Governor and the Territorial deputation, assigning to each their respective duties. The policy and system of Government in force at the time the regulations of 1828^{was} framed and promulgated recognized the principle that the public lands situated in the Territories should not be granted away without the consent of the representatives of the people residing in those territories. The territorial deputation at that time were supposed to represent more immediately the interests of the people from amongst whom they were chosen than the Governor who was generally imported: and indeed the troubles and revolutions which so often disturb the peace and tranquility of the people of California, most generally had their origin in the appointment of foreigners to offices of Government, instead of Native Californians. This particular regulation which gives to the Governor the power to grant and reserves to the deputation the power to confirm, is modeled after the rules and regulations which governed alienations of land while the country was under Spanish Jurisdiction and subject to Spanish Laws. A concise review of those laws and the regulations which governed the alienations of the public domain, under the Spanish system will illustrate the practice of that Government. The laws of the Indies in relation to public lands were revised in 1756 which revision was issued in the form of a general instruction. From an examination of this instruction and also of the previous laws it will be found that no land could be alienated from the Crown to individuals or corporations without the previous consent of the sovereign or some other authority commissioned by him. And also that the legal

estate could not be conveyed or the fee could not pass from the crown to an individual until the grant had been confirmed, which was done upon proof of the acceptance of the land. The confirmations were for a long time made by the King himself and always by some authority different from the one making the grant and generally higher than the granting power. The authority to grant and the authority to confirm were distinct and separate and were never found to exist in the same person. A grant of land made by an officer of the crown was never considered as a grant in full property, but the King reserved to himself the exclusive right of confirming or not confirming the grant. The Vice Kings and other high officers were authorized to make enquiries into the rights of persons holding land and to confirm those who had good titles and restoring all lands held without such to the crown. The 3^d section of the Royal regulation of 1754 containing the following positive Order "that every ~~land~~ and all persons who shall have possessed Royal lands whether settled or cultivated titles or not, from the year 1700 till the day of publication of said Order, may prove before the Subdelegates by themselves, their correspondents or attorneys the letters and patents in virtue of which they hold their lands and the same section provides that if they fail to comply with the above requirements, their lands shall be forfeited, no matter by what title they may have been acquired. The 4th section of said regulation provides that if it shall appear from the ~~circumstances~~ ~~circumstances~~ presented by the persons notified to appear that they were in possession of the Royal lands by virtue of a sale or composition by the Subdelegates so empowered before the year 1700, although these acts may not have been confirmed by his Royal person, nor by the Vice Kings and Presidents, they shall still be suffered to retain fee and

and quiet possession of them Long possession of more than half a century was allowed to take the place of Confirmation not as a matter of right but as a special favor granted by the King. All lands sold or compromised for after the year 1700 up to the year 1754 if it could be made to appear that the grant had been confirmed by the King, or by other of his lawful authorities, the owners were protected in the enjoyment. But all who held lands without confirmation or as it is termed in the regulation ^{with the} necessary requests were required to make immediate application for confirmation.

To illustrate still further the practice and views of the Spanish Government in relation to the necessity of having all the requirements of the law complied with before the party was entitled to the fee I will refer to the regulations of Morales issued at New Orleans on the 17th July 1799 and which are to be found in 2nd Vol. White's Digest page 234

On the 22nd of October 1798 the King of Spain appointed Morales Intendant General and Subdelegated, he kept his office at New Orleans and was charged with the Superintendance and granting of the public domain in the Provinces of upper and lower Louisiana to the exclusion of all other authority. The object of the regulations issued on the 17th July 1799 is best expressed in the language of the Decree. He says that all persons who wish to obtain lands may know in what manner they ought to ask for them and on what conditions lands can be granted and sold - that those who are in possession without the necessary titles may know the steps they ought to take to come to an adjustment: that the Commandants and Subdelegates of the Intendency may be informed of what they ought to observe &c

And then by Article Eighteen of said regulations, it is

declared " Experience proves that a great number of those who have asked for land, think themselves the legal owners of it; those who have obtained the first decree by which the survey is ordered to measure and put them in possession, Others after a survey has been made have neglected to ask the title for the property, and as the abuse is continuing for a long time will augment the confusion & disorder which will necessarily result. We declare that no one of those who have obtained said decrees (notwithstanding in virtue of them the survey has taken place and that they have been put in possession, can be regarded as owners of land until their real titles are delivered completed with all the formalities before recited. The formalities recited are to be found in the preceding sections which give precise instructions how the title is to be made out and where it is to be recorded by the Officers of the general intendantcy. The Lieutenant Governors were authorized to make grants of land subject to be confirmed by the Intendant General who alone was authorized to issue a title in form to the party. On account of abuses which had grown up, by parties considering that the grant made by the Lieutenant Governor made them the legal owners of the land. Morals the Intendant General was under the necessity of issuing his special instructions of the 17th of July 1799, to which reference has already been made and in which we have seen that he declared on the most explicit terms that, until all the formalities of the law had been observed and fully completed with and until the real titles were delivered " they could not be regarded as the owners of the land see Art. 317.

The formalities referred to are various and precise much more particular and precise than the formalities contained in the regulations of 1838 under which the grant in this case was made. The principles continually

aperted in all Spanish Laws, decrees, and regulations in reg-
 ard to the alienation of the public lands belonging to the
 Crown are that where one Authority makes a grant and
 the power of confirmation is devolved upon an other and
 different Authority, there must be a concurrence of both, otherwise
 the legal title does not pass. The Supreme Court of the
 United States in the Case of *Les Bois vs Bromell* 4 How
 449 have decided that land held under a Concession
 was not finally severed from the Royal domain
 and converted into private property. The principle upon
 which this decision rests is that although the Lieutenant
 Governour was authorized to make Concessions, the title
 was not perfected until it was notified by the Inter-
 nant-General and a final grant issued. When the
 law requires two or more acts to be done in order to pro-
 duce a certain result, it will not be satisfied with
 the performance of one only. It is no answer to the plain
 requirements of the law that it was not the duty of the
 party to procure the approval of the Departmental As-
 sembly. When the law points out the terms on which a
 complete title can be had, and the formalities with
 which it must be clothed; those formalities must be
 observed and all the terms must be found to exist before
 the title is complete. And it is not material upon what
 party the law devolves the duty of their performance.
 The terms required by the Mexican Laws are few in num-
 ber and the formalities to be observed are plain & simple.
 The order of proceeding is clearly pointed out in the rules
 and instructions furnished the Governours of the Territories
 by the Chief Executive, and the order in which those
 instructions required each particular act to be ~~done~~ perfo-
 rmed is expressed in language of an unmistakable mea-
 ning. When the party presented his petition the duty of
 the Governour commenced, if the information which
 we have seen he was required to obtain was favorable

he acceded to the prayer of the petitioner. The precise lan-
 guage in which his assent should be expressed is not
 formally stated in the regulations neither was it
 the practice adopted by those Officers who did not wholly
 disregard all the formalities of the law was to make a
 short marginal note of Concession on the Petition
 in which all the papers were directed to be forwarded to
 the territorial Deputation for their approval. The territorial
 Deputation after the receipt of the Expediente technically
 proceeded to the discharge of the duty which the law
 had imposed on that body, this duty having been performed
 the papers were required to be returned to the Governor for
 his final action or as it is frequently expressed in the
 resolution of the Deputation directing the Expediente to be
 returned to the Governor for its further disposition.
 The further disposition evidently refused to the document
 which the eighth regulation authorizes the Governor
 to sign and deliver to the Party interested and which was
 the final Act required by the Law to complete the title.
 After the departmental Assembly had approved the
 concession made by the Governor it was necessary
 to have some Conduct to convey the title to the grantee
 otherwise the fee would never vest in him. When the
 final document was delivered to him he was made
 the legal Owner of the land and was authorized to
 proceed to the possession. The formalities with which
 any title derived from the Government was required
 to be clothed, and the terms upon grants could be
 had are indicated with sufficient exactness -
 The approval of the Territorial Deputation was not a
 matter of mere form This was the first document the
 law authorized the party to receive and was the last
 act which the law required to be done, and this
 is made evident from the statement which
 the 8th Article requires this document shall contain

Which is that said grant is made in exact Conformity with the provisions of the laws. This declaration embraces all the essential requisites of the law from the ^{initial} steps of the claimant to the issuing of the Document itself including the approval of the Departmental Assembly without which the grant could not be definitive. If the Governor shall see fit to issue a document to the party prior to the approval and insert in it the words "that said grant is made in exact Conformity with the provisions of the laws" such document would be issued with out authority of Law and would not import unity on its face. The formalities with which every title derived from the Government was required to be clothed and the terms upon ^{which} grants could be had, are indicated with scrupulous exactness. The approval of the territorial deputation was not a matter of mere form neither did it follow the conception of the Governor as a matter of course. The practice of the deputation was to refer the whole proceedings ^{of investigation, that} to a Committee after an examination of the papers, made a report upon the facts as they found them to exist, and concluded with a resolution either of approval or disapproval of the conception and sometimes approving only in part. I find I find by an examination of different records on file, that the deputation assumed a general supervision over the acts of the Governor, and their inquiries were particularly directed to the point as to whether all the preceding requirements of the law had been complied with and in cases where all the formalities of the law ^{had} been observed by the Governor, the Committee announced the result of their investigation in the following words "the joint Committee having seen that every thing that has been done is in conformity with the law of August 18th 1826 and Article 5 of the resolutions of November 1828. and as a further testimony of the

Consequences which the Deputations uttered, was to the formalities required by the law, the following Compliment on my passage is frequently found in their proceedings when acting on Concessions made by Governor Figueroa "From the examination of the Expediente the Committee has been impressed with the opinion which it bears of the scrupulousness and tact with which his Excellency the political Chief ordered it to be made; so that neither in its formation nor in the steps taken is any essential requisite wanting." The necessity of a strict compliance with all the requirements of the law not only in regard to the formalities to be observed, but in the steps to be taken is here distinctly indicated.

Under our own land system all the several acts which the law requires to be done in order to divert the Government of the legal title to any portion of the public domain and vest in an individual must be performed. The holder of a Registrar's certificate and Receiver's receipt, is not the owner of the fee to the land purchased by him, until the patent issues. Although the issuing of the patent is a mere ministerial act, which must be performed according to law if the Officer for any cause should refuse to issue it, the legal title would continue in the Government, and the purchaser would have nothing more than a mere equitable estate in the land for which he had paid his money. The Supreme Court of the United States in the case of *Welch vs Jackson* 13 Pet 498 has decided that nothing passes a perfect title to public lands, with the exception of a few cases, but a patent. The exceptions are where Congress grants lands in ^{words} present grant. The Court in the same case have laid down the principle that whenever the question in any Court State or Federal, is, whether a title to the land which had once been the property of the United States has passed, that question must be resolved by the laws of the United States 13 Pet.

The principle here announced by the highest ~~Legal~~ ^{Judicial} tribunal known to the Constitution is applicable to questions of a similar character arising under the laws of Mexico. And in all cases ~~cases~~ the enquiry must be whether the title has passed according to those laws. After the revolution no title could be acquired from the Government of Mexico until Congress passed a law authorizing the legal title to be conveyed to individuals. To this law and the evidence of the acts necessary to be done under it, we must look for the legal title, as no right can be acquired under a law which is not in pursuance of it. Governor Figueroa seemed to have a clear view of his duty, and a more perfect understanding of the law under which he acted than any of the many Governors by whom he was succeeded. But few grants had been made under the regulations of 1828 when Figueroa arrived in California which was in January 1833. The grants made during his administration have more of the formalities required by the law, and the order of time in which each act is required to be performed, is more punctually observed than characterizing the grants made by any of ^{his} predecessors in office. At least so far as I have been able to give them a critical inspection. The practice adopted by Governor Figueroa conformed in almost every essential particular with the views I have submitted in relation to the construction of the law under which grants are made. His general practice was, after he had received the petition, to ^{in many} make for information on its margin, which if he acceded to was followed by a short note of concession in which he invariably decreed all the papers to be forwarded to the Territorial Deputation. In addition to this note of concession he sometimes made out a more formal title paper prior to the approval, which he delivered to the party for his security, but in all such cases the document thus issued was by a Condition attached made

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subject to the approval of the Territorial Deputation.
and that this document thus issued was not intended to
pass the title to the petitioner until all the acts required
by the law had been performed, is evident from the condi-
tions which were annexed to all such documents,
which are as follows: "When the ownership is confirmed
to him he shall request the proper magistrates to give
him judicial possession" and the party was also enjoined
to present this document to issue, after to the Govern-
or after confirmation had been made in order that it
might again be made valid. The document which
the Governor delivered to the party before approval had
taken place was never before the Deputation, they had
no knowledge that any such document had ever been
issued, their action was confined to the concession and
when they had approved that act of the Governor, they
returned all the papers to him for the final disposition.
After the Governor had received the approval of the Deputa-
tion he issued another document which was delivered
to the party. When the party received this document, which
is to be issued by the 8th Article of the regulations, the
effect of which was to give him as a title he was in
possession of the documentary evidence which proved
the performance of the several acts necessary to be done,
in order to establish in him the complete legal title
of the land described in his petition. If the proceedings
had indeed when the Deputation had made their appro-
val, the fee never could have vested in the grantee; the
final document could alone perform that office, and
that document could not legally issue until after confirmation
had taken place. But the successors of Inguero in the very
loose and informal manner in which they dispose
of the public domain adopted the practice of issuing a
formal title to the party in the first place (and by which
he was authorized to proceed to the immediate possession

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of the persons, without completing what they had commenced by the issuing and delivering to the party the final document required by the 8th Article of the Regulations. It is not strange that under a practice like this, abuses should have grown up, and that parties, in the language of Morales should have concluded that they were the ^{proprietors} owners of the land notwithstanding no approval had been made and no final document had ever been delivered to them. It has been gravely argued that the isolated document issued without authority of Law unsanctioned by Confirmation & unacted by any final document, conveyed the legal title from the Government of Mexico, in eight square leagues of land to the claimant in this case. If the title emanated from the Governor, then the position would be more tenable, but when we consider that the law was the source and fountain from which alone title could be drawn, and that we must look to the evidence of the Act which the law required should be performed, before the Government could be divested of the fee to any part of her public domain, the proposition is stripped of every vestige even of legal probability. The law in Republics makes the title and not the Officer appointed to carry it into Execution. We have seen what Acts are necessary to be done under the laws of the Republic of Mexico in order to divest the Government of the fee to any part of her public lands and vest it in an individual. It was not in my judgment in the power of the Officer authorized to execute the law, to dispense with any one of those Acts. They were all essential. Their performance were the terms upon which the Government had agreed to part with the legal title to her lands, and when such performance is not made to appear affirmatively no legal estate vests. It is moreover a well established doctrine that of the Common Law that where there are divers Acts concerned to make a conveyance estate or other thing, the original act

act shall be preferred and to this the other acts shall have relation, and again they all make but one act although done at several times (see Viner's Abridgment title Relation) Cruise on Real Property Vol 5 pages 510, 511 lays down the doctrine with great distinctness. He says "There is no rule better founded in law reason and common sense than this that all the several parts and circumstances necessary to complete a conveyance shall be taken together as one act and operate from the substantial part by relation. Authorities to this point might be multiplied but I consider the doctrine so firmly established and so universally confessed that its further vindication is wholly unnecessary.

Let us test the title in this case under consideration by the foregoing rules and principles which we have seen, have not only received the sanction of the highest tribunal in our Country and which have been hallowed by the Common Law, but were ingrafted into the laws and regulations of the Spanish Government, and were scrupulously observed by that government in the alienation of the public domains up to the time, when the Revolution of Mexico was proclaimed triumphant.

The paper issued by Governor Michelmorena to the claimant dated February 11th 1845 and which it is insisted conveyed to him a perfect legal title in eight square leagues of land, was evidently the first act of the Governor after he received the petition of the claimant. It does not appear that the Governor proceeded to obtain the information required by the 3rd Article of the Regulations before he made the concession asked for. That he did obtain the necessary information which the law required him to procure may be presumed. When the claimant presented his petition, the power of the Governor was called into action. His jurisdiction over the subject had attached, and all questions as regarded the necessary conditions which the petition should contain, and

all questions as regarded objections to making the grant which might arise in the investigation required by the 3rd Article was properly submitted to his discretion and the law well presume were correctly decided. Notwithstanding they do not appear on the face of the proceedings. The same principle of presumption which apply to the proceedings of tribunals of inferior and limited ^{jurisdiction} are applicable to the acts of an officer when acting under a special delegated and limited authority. As I hold Governor Micheltorena was when he made the grant in question. It was earnestly urged by the Counsel for the Claimant in their argument that the approval of the Departmental Assembly must be presumed to have been given before the Governor issued the title. If the paper produced in this case, and which is relied upon as conferring full title, was the final document which the law required the Governor to issue to the party, after the approval had taken place, the question of presumption urged by the ^{Counsel} would be more probable but in the absence of that document, in the face of all the proceedings and with the testimony of Juan Castaneda before us one of the Claimants own Witnesses who swears that the grant was made while Micheltorena was in "Campaign" and as we are to suppose has a fact on all sides, and besides when the history of that Province informs us that the Departmental Assembly had not been convened but once from the year 1840 until the special session of the 23rd August 1844 and from that time till after the present grant was made no session of that body had taken place, we are not only forbidden to indulge any such presumption but the conclusion is irresistible ^{that} no such approval was ever made. The Counsel for the Claimant in a brief which they file in this case state that "We learn from history that Micheltorena was taken prisoner at Comuzca a few days after the date of this title and sent out of the Country"

From this statement it would seem that at the time this grant was made California was in a state of revolution and that this grant made in the field, was ^{about} one of the last official acts of Governor Micheltorena and for that reason deserves the closest scrutiny. Yet with all these facts and circumstances before us we are strongly inclined to presume that the Governor made an exception, which preceded the title paper produced, sent that exception with all the other papers to the Departmental Assembly, that the Assembly approved it and sent it back to the Governor and that he upon that approval issued the ^{single} title to the party. I think the doctrine of intendment and presumption giving to it the widest range and the greatest latitude, cannot be indulged to the extent here claimed, and be allowed to contradict the plainest conclusions both of law and fact. The doctrine of intendment and presumption does not extend to persons or tribunals, exercising a special limited or mere statutory authority. 1 Green 306. 5 U. S. Supr. 249. The rule here laid down I hold is applicable to the Officers selected by the Chief Executive of Mexico to make grants of the public domain in California. Decisions which have been adjudicated in the Supreme Court of the Supreme Court of the United States for lands situated in Louisiana and Missouri and the two Floridas the Court held that the doctrine of intendment and presumption "that what ought to be done was done" only applied to the acts of Officers to whom the whole subject of making grants of the public domain had been committed to their sovereign and that without restriction and that it would not apply to persons or tribunals exercising a special ~~or~~ limited or mere statutory authority. The difference between a Governor of East Florida and a Governor of California in regard to the power which

each were respectively authorized to exercise in making grants of the public lands is to be found in the source from which such power was derived and in the extent of the jurisdiction conferred. Justice Baldwin in his elaborate opinion in the *Oneida* case 6 Pet. 729 says "If any jurisdiction is given and not limited all acts done in its exercise are legal and valid." The source from which the Governors of Florida derived their unlimited authority under which they acted was the King, in whose title to all the public domain, selected in his American dominions was vested. Complete and full jurisdiction was conferred to the Governors of Florida on the whole subject of making grants. As an illustration of the unlimited power which they possessed, each Governor adopted his own rules and framed his own regulations for the officers who were selected by him, in distant settlements as agents to execute his wishes. An examination of those instructions and regulations will show that they assumed the most unlimited and unrestricted authority on the whole subject. To the acts of such officers, within the sphere of their duty the doctrine of Intendment and presumption will apply to its fullest extent. But how very different was the power exercised by the Governor of California, and how different was the source from which their authority emanated? After the revolution the title to the public domain ^{was} vested in the Mexican Nation & could only be divested under authority of Law. The act of the 18th August 1824 passed by the Mexican Congress conferred that authority. This act conferred full and complete power on the president of the Republic to dispose of the lands of the Nation ^{situated} on the territories restricted only by the terms of the law. In pursuance of the power thus conferred, the chief Executive adopted his rules and regulations with great exactness in which he pointed out the

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The conduct to be observed before a complete title could be made. The Governor of California was the officer selected by the President to execute his laws. It was as competent for the President to have selected as his Agent of Colonization in California any private individual to execute his wishes, as it was the person holding the office of Governor and the acts of such individual within the prescribed limits of his authority would have been equally valid and binding. The Governor while executing the instructions prescribed by his Superior, was acting under a special delegated and limited authority; he had not full and complete jurisdiction over the subject; his authority was restricted and his acts to be of any validity had to receive the sanction of an other and different tribunal. He occupied the same relation to the Chief Executive of Mexico, which the Lieutenant Governor of Upper Louisiana occupied to the Intendant General located at New Orleans; and it has never been claimed, that their acts carried with them the presumption of law, that what they should have done was done. Notwithstanding it did not appear on the face of their proceedings: The President to whom the act of 1824 had committed the whole subject of colonizing the lands, ^{situated} on the territories was responsible to the nation for the faithful execution of the trust confided to him, and so far as his own acts were concerned they were entitled to all the aid which the doctrine of intendment and presumption could give to the acts of an officer or tribunal exercising general jurisdiction over any particular subject. But the Governors of California acting as they did under a special delegated and limited authority, it must appear on the face of their proceedings that they not only acted within their prescribed limits but that all the acts required to be done were done in the manner prescribed by the regulations of 1828. These regulations made it the duty of the Governor to forward all the papers in the case to the Department.

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Assembly for their approval embracing his own action on
 the petition. In the case before us there is no evidence
 that was ever done; and no evidence that any approval
 or confirmation was ever made; and no evidence that
 the final document required by the 8th Article of the
 Regulations was ever issued or delivered to the party -
 a commencement of the foregoing acts, being in my ^{view} judgment
 to pass the legal title from the Government to the claimant
 and the fee continue to remain in the Mexican
 Government - and by the terms of the treaty of the 3^d of
 February 1848 passed to the United States subject
 to all the Equities with which it was charged at the
 time a change of jurisdiction took place.
 The next question which arises in this case is whether
 under the Equity powers conferred on this Board by
 the 11th section of the act of 3^d March 1857. the imper-
 fect title presented by the claimant can be comple-
 ted. That this Government had imposed on it the same
 duty to perfect this title that rested on Mexico before a
 change of Government took place is not open to question
 but this was all the United States was bound to perform
 4 How. 460. How then did the plaintiff's claim stand
 previous to that time? The third Article of the treaty betw-
 een the United States and France of the 30th of April
 1803 and the 9th Article of the treaty of Guadalupe
 Hidalgo between the United States America and the
 United Mexican States are almost identical the object of
 both being the protection of private property - The subsequent
 legislation of Congress which was deemed necessary to carry
 that part of the 3^d Article of the treaty of 1803 into practical
 effect which provided for the protection of inchoate and
 imperfect titles, and the decisions of the Supreme Court
 which followed have given a construction which furnishes
 a safe rule for the government of this Board in their
 adjudications upon rights of a similar character.

The Supreme Court in the case of the United States against Reynolds after quoting the 3^d article of the treaty of 1803 use the following language "The term property in this article will embrace rights either in possession or in action; ~~property~~ to which the title was completed or that to which the title was not yet completed, but ⁱⁿ ~~with~~ acceptance it could be applied only to rights founded in justice and good faith and based upon authority competent to their creation. The article above cited cannot without the grossest perversion be made either to express or imply more than this. I cannot think that it was the intention of Congress, when by the act of the 3^d of March 1851 it provided for the perfection of imperfect titles derived from the Spanish and Mexican governments and for that purpose conferred Equity powers on this Board either to create new rights or enlarge others previously existing. The terms "principles of Equity" as used in the law of 1851 are not divested of their technical meaning and import are not to be understood as conferring general powers upon this Board of Commissioners to compromise and settle claims, which might be submitted to them, according to their own mere arbitrary pleasure without regard to the well established rules and principles which govern proceedings in all Courts of Chancery. The Supreme Court of the United States in the Case of Bowline (11 How page 88) lay down the following rule, they say By the act of 1824 we are required to exercise the power of a Court of Equity and to adjudge in the given case whether a Court of Equity could according to the rules and laws of Spain consider the conscience of the King so affected by the acts of his lawful authorities in the province, that he became a trustee for the claimant and held the land claimed by an Equity upon it amounting to a divestment of so much from the public domain, before and at the

time the country was ceded to the United States. They then proceed to say "This was the rule laid down for our government in 1836. in the case of Smith vs The United States (10 Pet. 330. 331) and which has been uniformly since. The law of 1851 having enforced upon this Board the same Equity powers which the law of 1834 enforced upon the Courts, the same rules of decisions which governed the adjudications of the Supreme Court under that law, are applicable to the proceedings of this Board under the law of 1851 when cases of a similar character are presented for adjudication. The foundation upon which the claimant's Equity in this case rests is the concession made by Governor Mechemoreno on the 11th day of February 1845 - while in connection with the claimant's petition, must be considered as the beginning of his rights whatever they are. The petition of the claimant - and the concession of the Governor will be construed together. The claimant in his petition represented as the motive which induced him to ask for the land that he was the owner of a number of head-cattle and horses, by the produce of which he lived and being in want of a fit land on which to place them he asked for the grant in question. On these motives the Governor acted and made the grant as asked for in the claimant's petition, and to which the usual conditions were attached except that he should build a house within a year and that it should be inhabited. This important condition either by design or oversight was not inserted. The Law Agent amongst other objections which he urged against the confirmation of this claim insisted that the title was void because the Governor did not fix the period in the grant, within which the grantee should occupy or cultivate the land. I have not been able to arrive at the same result. Every person asking for a grant of the public lands for either of the purposes specified in the first

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articles of the regulations, agreed to take it subject to those conditions. The 11th article confers the authority upon the Governor to fix the time within which the condition upon which the letter had agreed to accept the grant should be performed; but if the Governor, as in the present case, should neglect to insert the period within which performance should take place, the grant would not for ^{that} reason in my judgment be rendered wholly null & void as the Law Agent has contended it should be.

In cases where the Governor has failed to express in words the precise period of time within which the party should occupy or cultivate, the implication of Law would be, that performance of the ^{condition} ~~condition~~ should take place within a reasonable time after the party was authorized to take possession of the premises. The Law Agent in the brief which he filed in this case, makes the following point - that the grant is void, on the ground that the 3^d condition declares that the land is given to the grantee "as a donation" and he maintains that under the law of 1824 and the regulations of 1828, the Governor had no power to make grants of land in donation but only for the purposes of settlement and cultivation. The precise words of the condition are "The land granted in donation contains &c" After a careful inspection of a number of grants made by the different Governors of California and particularly those made by Governor Figueroa I find that the same form as regards the particular condition is generally adopted and that the phrase in "donation" is almost always inserted. The word donation when it appears in the condition is not in my opinion used in its strict legal sense the meaning of which would be that the land was given as a free gift to the grantee: but it is used in contradistinction to the word purchase in which sense the land granted might be considered as a dona^{tion}.

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with conditions annexed. The most complete and formal grants I have been able to find characterize the land granted in precisely the same terms. The absence of the condition in the present case which expresses the consideration of the grant, does not in my opinion in any way change or alter the meaning which the Mexican authorities consistently attached to the phrase "donation". In the absence of authority I am inclined to think that the insertion of the same phrase in a patent issued under our laws would not vitiate the patent or render it wholly void as the Lugo Agent seemed to think it would, but that it would be considered an immaterial declaration inserted by the officer. As both the foregoing objections to the foundation of the claimant's right to Confirmation I deemed it necessary to dispose of them before I proceeded to the investigation of his equitable interest. The first act the claimant was required to perform under his contract was taking possession, because that was the purpose for which he had asked for the land. His petition contains the detailed statement that he had a number of head-cattle and horses and had no farmland on which to place them, he then selects the particular tract described in his petition for that purpose and the Governor states in his grant that "Whereas Enriquez Huber for his own personal benefit and that of his family has petitioned" &c he then proceeds to grant him the land for the purposes expressed in his petition. The deposition of Theodore Cordova which contains the only evidence offered by the claimant in regard to the possession and inhabitation of the land granted contains the following statement. In September or October 1845 I leased of Mr Huber the claimant the part of the Rancho lying between the Tealhas and Yuba rivers for the term of six years. The lease expired in September or October 1851. In that lease I bound myself to build a house and corral on the land which was to become the property of Mr Huber at the expiration of the lease. I hired John Boulesh Recello, ^{to build} the house and corral and

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paid him for the work. They were built ⁱⁿ 1846 I don't
 remember the exact date". He then proceeds to state that
 he had cattle and horses on the Ranch in the year 1845
 and from time up to the year 1850, and that the house
 and Corral ^{were standing} in 1851 and as he supposed were still standing.
 This deposition was taken in the Month of May 1852
 There is no proof that the claimant was had ^{of the land} possession
 except in the way indicated in Cordua's deposition.
 There is no proof that he was occupied it with his own
 cattle or horses, the very purpose for which he had bought
 it. There is no proof that he was cultivated or improved
 it in any way but on the contrary it is proved that
 instead of taking his own cattle as he had agreed and
 placing them on the land he leased it out to another per-
 -son that is he leased that part lying between the Feather
 and Yuba Rivers, there is no proof that notice of any
 kind was ever taken of this part of the grant and the
 fair presumption is that he abandoned that part altogether.
 The Lessee Cordua states in his deposition that he knew
 a man to build a house and Corral and that they
 were built, but he does not state that the house was ever
 inhabited either by himself, the claimant, or by any other
 person. Indeed the inference is strong, that he never
 was occupied himself, because in another part of his
 deposition he states that the lease which had been exe-
 cuted to him by the claimant was burnt up when his
 tent was burnt in 1850. The strong inference therefore is
 that he occupied a tent and not the house and that
 it was never inhabited by him during the time he
 kept possession of the premises. To what acts then of
 the claimant are we to look for the Ejectment which he
 claims were binding on the Government of Mexico to
 make him a complete title to the eight square leagues
 of land mentioned in his grant, at the time the United
 States took possession of the Country.

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There is no proof that he either expended money or labor
 No proof that he contributed by any single act of husbandry
 to promote the policy which the Mexican Government had
 in view in relation to her public domain, but the proof
 does show that he sought it for purposes of speculation
 and not for any of the objects expressed either in the
 Law of 1824 or in the regulations of 1828. The lease of
 Cordova expired in 1857 and he had ceased to occupy
 it with his cattle in 1850. And there is no proof that the
 claimant ever then took possession of the land or exercised
 any acts of ownership. Now it - What particular part of
 the immense region of country lying between Yuba and
 Feather Rivers, did Cordova under his lease occupy with
 his cattle? In the absence of all proof, we are to suppose
 that they were permitted to roam over every part of it -
 No particular portion ever was designated in the lease
 at least Cordova does not state in his deposition that the
 lease contained any such designation of the part he
 was authorized to occupy except the part lying between
 the rivers: An Equity to have been binding on the Govern-
 ment of the United States must have fastened on some
 particular spot or tract anterior to the time when a
 change of jurisdiction took place otherwise the fee
 passed to the United States without any equitable charge
 upon it. The same witness states in his deposition that
 the house and Corral were built in the year 1846. he
 does not know the precise date. The grant was made in February
 1845 the house to be built within one year from that
 time should have been built in February 1846. This fact
 the claimant should have been able to establish.
 A party asking Equity should be able to show that he has
 performed his part of the contract or show some good
 excuse for not performing it. Otherwise he is not in
 a position to call upon the opposite party for the perform-
 ance of his part. This is a well established principle of

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of Equity and applies with peculiar force to the facts in this case. It is insisted that the possession of the land in this case must be considered as a full compliance with that provision of the regulations which requires the party either to occupy or cultivate the land granted. The construction presented involves the inquiry whether the power which the 11th Article of the resolutions confers upon the Governor to fix the time within which the settler is bound to occupy or cultivate the land, embraces individual settlers, or whether it applies alone to Empresarios. It is a safe ^{rule} interpretation of laws, when their meaning is at all doubtful, to look to the object & intention of the law, and from that learn its true meaning. The manifest purpose of the Colonization Law of 1824 and of the regulations of 1828 framed in conformity with the principles of that law was, to induce the settlement and cultivation of the public domains by converting it into private property, that in time it might serve as an aid to the public necessities. If parts of the public lands had been made without conditions of occupancy, cultivation and improvement of any kind they might as well have remained public so far as any future benefit would have resulted to the nation. The first article of the regulations of 1828 announces the purpose for which lands could be obtained and is in following words: "The Governors of the Territories are authorized in compliance with the laws of the general Congress of the 18 August 1824 and under the conditions herein after specified, to grant vacant lands in their respective Territories to such Contractors (empresarios) families or single persons whether Mexican or foreigners as may ask for them for the purpose of cultivating or inhabiting them". The Chief Executive of Mexico in framing this regulation gave a construction to the 12th section of the Law of 18th August 1824 which section was as follows: "It shall not be permitted to write in one hand

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as property more than one league square of five thousand
 land varas of irrigable land, four superficieses of
 farming land and ^{not} irrigable, and six in superficieses
 for stock raising." Two purposes are here set forth,
 for which a grant of the public lands could be
 obtained and the precise quantity allotted to each
 purpose for farming five leagues are allowed, and for
 grazing or raising stock six leagues are the maximum
 making in all eleven leagues which could be united
 in one person. It was made the duty of the party asking
 for land to state in his petition the purpose for which
 he desired the grant, if for the purpose of raising stock
 the Governor was authorized to attach to his grant a
 condition that the land granted should be occupied,
 and also had the power of designating the kind of
 acts necessary to constitute occupancy, those acts as
 expressed in the conditions are that he should within
 a year from the date of the grant build a house and
 that it should be inhabited. The object of this condition
 is apparent, when we look to the policy which the
 Government had in view. While the lands remained pub-
 lic they were free and open to all persons for grazing
 purposes, but after they were reduced to private ~~ownership~~
 they were more subject to the exclusive occupancy of
 the grantee, and he was restricted to the limits of his
 grant, in the free enjoyment of which he was protec-
 ted by the laws. As a consideration for the rights and
 privileges thus conferred, the grantee was required to
 do some acts declaratory of his ownership of the land
 the most important of which was he should build a
 house and that it should be inhabited. The policy
 which the Mexican government had adopted in regard to the
 public domain, was not satisfied with any thing less
 than the public and notorious occupancy of the land
 not by herds of cattle roaming over the country but by

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an actual domestication of the party who had been declared Owner of the land granted to him by the Government. If the 11th Article of the regulations of 1828 does not apply to individual settlers, then the Condition subject to which, according to the terms of the first Article, all grants must be made are nowhere specified in the regulations. The 11th Article reads as follows "The Governor shall designate to the new Settler a proportionate time within which he shall be bound to cultivate or occupy the land, on the terms and with the number of persons or families which he may have stipulated for it being understood that if he does not comply, the grant of the land shall be void. Nevertheless, the Governor may revalidate it in proportion to the part which the party may have fulfilled. The first Article specifies the class of persons to whom the Governor is authorized to make grants, viz to Contractors families and single persons all whom are to take them subject to the Conditions in the language of the regulations herein after specified. Those Conditions are particularly specified in the 11th Article and in any sense apply to every class and to all persons who have asked for grants of the public lands for the purpose of "Cultivating" or "inhabiting" them, and full power is conferred on the Governor to fix the time within which the Conditions here specified shall be performed the whole design and intention of the 11th Article was to enable the Government to enforce the Consideration which the party had stipulated to give for the lands granted to him. To give the Construction asked for by the Counsel for the Claimant would be defeating the leading Object of the Law, it would make the Condition of inhabiting and cultivating applicable alone to empresario grants, a class to whom very few grants were made in California

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The Construction above given to the 11th Article is greatly strengthened by the succeeding Article which is as follows "Every New Settler after having cultivated or occupied the Land agreeable to his Speculation, will take care to prove the same before the Municipal Authority in Order that the necessary record being made, he may consolidate and secure his right of Ownership, so that he may dispose freely thereof." The language here used is specific and comprehensive, every class of persons specified in the Law. The words "Every New Settler" embrace every class who have asked for Land for the purpose of inhabiting or cultivating them and these terms are not-technical in their application to any particular class, by the words "agreeable to his Speculation". Because every petitioner for Land speculated with the government to perform all the Conditions which legally attached to the purpose for which, he had in his petition, agreed to appropriate the Land, that might be granted to him. The Supreme Executive in framing his instructions made them applicable to all the different classes of persons to whom grants were authorized to be made, in case where restrictions were taken and the restriction was expressed in terms and not in language of doubtful meaning as in the case of grants made to Empresarios the additional approval of the Supreme Government, required in such grants is contained in the 7th Article and is in the following words "Grants made to Empresarios for them to Colonize with many Families, shall not be held to be definitively valid until the approval of the Supreme Government be obtained to which the necessary documents must be forwarded along with the report of the territorial Department." The approval here required is the subject of a distinct Article and the class to which it applies is distinctly specified. The approval necessary to the validity of grants to families and individuals, is also the subject of

a distinct Article. But when the instructions are intended to embrace all the different classes specified in the Law words are used in their Collective sense as the name "Settler" which in the 11th Article is intended to designate all the different Classes enumerated in the first Article of the regulations. The policy which the Government had in view to be carried into practical effect would demand that the Condition of Occupancy and Cultivation should be as readily required of the individual Settler as it would be of the Imperial Settler and the reason why the Government should reserve to itself the power to secure performance in case of individual Settlers is still more forcible because it was to that class that the Government was to look for a Consumation of its policy in regard to the public lands in the Territory of California. As the Condition to which the 12th Article is particularly applicable has not been inserted in the grant under consideration, it is not necessary to enquire into its precise object and effect further than it tends to illustrate the meaning of the Article which immediately precedes it - sufficient to say that in my judgment it was intended to secure the actual performance of all the Conditions of the Law. The Claimant having agreed for the land described in his petition, for the purpose of inhabiting it and ^{not} for the other ^{purpose} specified in the Law. The question presented by the facts is, whether the possession of the land by his lessee was a substantial compliance with his stipulations. The word "inhabiting" is defined by Mr Webster as follows "dwelling in, occupying as a permanent inhabitant, residing in." The definition here given it seems to me is clearly the sense in which the word inhabiting is used in the first Article of the regulations of 1838. Meaning the actual residence on the premises; and the word occupy in the 11th Article is intended to convey precisely the same idea. If the word possession had been used instead of "inhabiting" then the possession

of the Lessee might be construed to be the possession of the Claimant. The legal ownership of land draws with it the constructive possession, but there can be no such thing as a constructive inhabitaney. The Supreme Court of Pennsylvania in giving a construction to a law of that State which required a settlement on her public lands say "that improvement requires merely clearing and cultivating the land, but settlement requires Actual Residence (See 2 Hilliard on real property 339) The word inhabiting conveys more forcibly the idea of actual residence on land than the word "settlement" as used in the Pennsylvania Law. because a settlement either on land in a town or any particular place is gained by inhabitaney which means an actual residence per se and not by another. Without going beyond the question raised by the facts in the case I am clearly of opinion that the Occupation of the land by Cordew the Claimant's Lessee was not a substantial compliance of the law. The facts in the case of the United States vs. Bordow et al How. 63 in many particulars are not dissimilar to the facts in the case under consideration. This is a recent case decided by the Supreme Court, and the principles applied may be relied upon as the settled doctrine of that tribunal in all cases where they are applicable. A large tract of land was selected by Bordow where he could establish his whole family and employ all his negroes in carrying on the establishment & instead of removing his family and negroes to the plantation he placed on it a single negro man who cleared and cultivated a small portion partem of it. This slave went to the place in the year 1783 and remained there until the year 1814 in constant possession for his master. The Court say that this kind of possession was not according to the terms of the grant and proceed to define the duty of the grantee, they say "It was the duty of the grantee to do two controlling and requisite acts before he could ask

for a completion of his title. First to present his concession in due time to the Surveyor General of the province and secondly to take possession in substantial compliance with the terms of grant." In the case before us the claimant asked for the land for a particular purpose which purpose he disregarded, and wholly failed to carry out, and instead of taking his own cattle and horses on the land as he had sworn the Governor to understand in his petition he would do, he leased the land to another person. This, on the authority just quoted, was not a substantial compliance with the terms upon which he had agreed to accept the grant. Can it be believed that the Government of Mexico if application had been made to that Government to complete the title in question on the grounds and for the same reasons now urged upon the United States, and under the same showing, would ever have given her sanction to such flagrant violation of her laws, and the policy she had adopted. In the language of the learned Judge in the case *Bosdon* "Such a proposition" ^{is} "a sense of Equity" and is contrary to the settled policy of the Mexican Government which was to make gratuitous grants for the purpose of actual inhabitation and cultivation and ^{not} to the end of mere speculation. The Supreme Court in still a later case have laid down with great distinctness the conditions upon the performance of which real equities might be fastened on the land. These rules will be found in the case of *Glen et al vs The United States* 13 How 258. The Court say very many applications for perfect titles to the District Court under the Act of 1824 have been resisted because subsequent conditions had not been complied with. First - such as Mill grants in Florida where the usual quantity of 16000 acres was given by Concession with a condition that the Mill should be built within a specified time. Second - Where grants were made for

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the purpose of cultivation and no cultivation follows
as in the case of Wiggins (14 Pet) and Boston (11 How)
3rd When by the Concession parties were required by special
legislations to levee and ditch on the river front in
Lower Louisiana. These were subsequent conditions
just as much as the introduction of a Colony of Hemp
groves and the manufacture of Cordage by Clonag
an; and yet no one has ever successfully maintained
that a party having such Concession could hold and
obtain a perfect title although he did not build the mill
nor occupy or cultivate nor levee and ditch founded
on the presumption that performance was unnecessary
In all these cases it was held that performance was
a condition precedent, and the Real Equity on which
a favorable decree for a patent could be founded
under the Act of 1824. The decision from which the
above Extract is taken was rendered on a claim presen-
ting an imperfect title, the completion of which de-
pended upon the Equity process by the party. The Court
decided that the performance of the conditions consti-
tutes the Real Equity on which a favorable decree
for a patent could be founded, and these conditions
were precedent. If the case under consideration was
a perfect title having every sanction the Mexican
Government could confer with conditions subsequent
attached, and the question of forfeiture for want of
performance was involved, the question would present
itself in a very different aspect. The party in the case
before us having failed to perfect his title his claim
for Confirmation depends entirely upon the Equity with
the charge was charged before and at the time the
legal title passed to the United States. We have seen
in what those Equities must consist a substantial
compliance with his agreement and the requirements
of the Law are indispensable and these

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precedent acts, the actual performance of which is the
consideration which entitles the party to a patent from
our Government, which as already shown he has failed
to establish by proof. But further, supposing the claimant
had proved a compliance with all the requirements of the
law and had established his equitable claim beyond
question, still no confirmation could be made on account
of want of identity and ascertainable locality of the land
granted. The claimant in his petition says, after stating
the purposes for which he desires the land, that he
solicits the land which "appears on the annexed map
consisting of eight square leagues a little more or less sit-
uated between the Yuba and Feather rivers a portion of
it half a league wide and two leagues long being on
the opposite bank of the latter (river) at the foot
of the Sierra Nevada" The following map presents a
correct traced copy of the original referred to in claimant's
petition. The grant describes the lands granted in
the following words "Whereas Enrique Huber a
Naturalized Mexican has for his own personal benefit
and that of his family petitioned for the vacant land
which there is between the Yuba and Feather rivers
a part of it being the latter river at the foot of the
Sierra Nevada and the boundaries of which are shown
in the accompanying map" This is all the description
contained in the grant, by which all the "vacant" lands
lying between Yuba and Feather rivers were granted to the
claimant. The quantity granted is not is not designated
in the grant, but the 3^d condition which is attached to
the grant fixes the quantity and is in the following words
"The land granted in donation contains eight square
leagues a little more or less as shown by the map which
is annexed to the Expediente. The Magistrate who
may give the possession will cause it to be measured
in conformity with the Ordinance leaving the surplus to the

map-

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may result to the nation for its convenient uses"
For the purpose of ascertaining the identity of the land granted, the petition map and grant will be considered together. When we come to examine the maps referred to in the petition and grant, we find that instead of giving a location descriptive of the land granted, it merely gives general boundaries within which eight leagues are leagues were to be located, and this general description is not aided by any judicial measurement by which the limits of the land might be fixed and its location determined. The map presents two lines representing the Yuba and Feather rivers, at a particular point on the map these rivers come together, from which point there are lines back for into the Sierra Nevada which is also represented on the map but not as a boundary. That portion of the tract lying on the opposite side of Feather river is also represented on the map, and is more distinctly marked than any other part of the tract. Yuba and Feather rivers are well known in the geography of California, and the general boundaries, within which the grant was to be satisfied are sufficiently specific. The judicial measurement which the party was directed to have made, was for the purpose of locating, within the limits specified on this map, the precise quantity of land granted leaving the surplus to the Nation for its convenient uses. It was within the provinces of the Officer authorized to make judicial measurement to fix arbitrarily any point of Beginning within those limits and from that point proceed to measure and define by proper bounds the precise land granted. Neither the papers nor the maps exhibit any point on either of the two rivers mentioned, where a survey could be commenced, and unless this Board should assume the authority, to fix a point from which it could direct a survey to be made, there is no other means of separating the quantity claimed from the mass of Public lands

That this Board has no such authority conferred on them by the Law from which they derive all their powers will not be questioned by any one. No particular land having been severed from the public domain, the claimant occupied the position of one having a claim on a large section of Country unlocated; in such cases the government has not been deemed to hold the fee un affected by a vested equitable interest until the location was made according to the laws of the particular Country from which the claim was derived. The Supreme Court in the case of the United States vs Forbes 15 Pet 183, defined in explicit terms their views on the subject of identity of the thing granted they say "that the Courts of Justice can only adjudge what has been granted by the lawful authority of Spain and separated from the public domain. The rule here laid down is applicable to the powers and duties of this Board of Commissioners, we can only adjudge what has been granted and ascertain what has been separated from public domain, and the condition of the thing granted relates to the time when the jurisdiction of the government from which the claim is derived ceased to ^{be} exercise over the territory of California, that the party could do no act after that period by which an Equity or any other claim could be fastened on the land, that would have been binding on the government of Mexico is not an open question. The government of the United States having succeeded to all the rights as well as well as the obligations of the former government it follows that she may refuse to confirm a claim for title for the same legal reasons, that they could refuse. The Supreme Court in the case of Leconte vs The United States 11 How. 127 in speaking of the numerous concessions which had been made by Court and all of which the Court say insist on the necessity of the severance of the property claimed from the public

domain either by actual survey or by some ascertainable limits or mode of separation recognized of a competent authority." The competent authority to make the separation in the case before us, was the officer authorized to make the judicial measurement, which in the territory of California took the place of a survey and was so regarded by the authorities of the Mexican Government. Even the manner in which the judicial measurement was made afforded a means of ascertaining the limits of the land granted and affected its separation from the public domain. The chief Justice in the case of the United States vs. King et al in discussing the question of boundary says "The instruments themselves contain no lines or boundaries whereby any definite and specific parcel of land was severed from the public domain, and it has been settled by repeated decisions in this Court and in cases too when the instrument contained clear words of grant, that if the description was vague and indefinite, as in the case before us, and there was no official survey to give it a certain location it could create no right of private property in any particular parcel of land, which could be maintained in a Court of Justice" The learned Judge then proceeds to say "It was so held in the cases reported in 15 Pet. 184-215-275-319 and in 16 Pet. 159-160. After such repeated decisions upon the subject all affirming the same doctrine the question cannot be considered as an open one in this Court" All the later decisions are in accordance with the principles contained in the passage just quoted and are peculiarly applicable to the facts in the case under consideration. All the time the government of Mexico ceased to exercise jurisdiction over California the claimant had no right of private property in any particular parcel of land he had neither an actual seisin or a seisin in law. Identically say the Court in 16th Pet. 160" is essential for the latter and has uniformly been, in the contemplation of this Court, when it has conformed

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Florida grants in whole or in part. In the case of Smith vs the United States 10 Pet. 331 Justice Baldwin in discussing the question of identity of the thing granted says "It has also been distinctly decided in the Flinders cases that the land claimed must have been severed from the domain of the King by some grant which gives it locality by its terms by reference to some description or by a vague general grant with an authority to locate afterwards by survey making it definite; which grant or authority to locate must have been made before the 24 of January 1818" and he proceeds to say in relation to such grants as were vague and indefinite that they were only valid when the survey was made before the time fixed by the treaty of Cession; but where a grant was specific the survey might be made after that time. If the grant in question was a specific grant that there would be no difficulty in ascertaining the precise land granted and the Surveyor General would have no difficulty in making the survey. In the case under consideration there is no locality given in the grant by a reference to any description either by name or otherwise. It is in the language of the learned Judge just quoted a vague general grant with an authority to locate eight leagues of land within certain limits which the geography of California informs us embraces a large region of country out of which several Counties have been formed. This authority to locate has now been executed the title of the claimant remains precisely as it was at the date of the grant in 1845. At the time that the United States took possession of the Country no location had been made no tract of land had been severed from the public domain no act had been done by which the Government of Mexico could be considered as a trustee for the claimant for any part of the eight leagues of land.

he had no existing right of property in any particular part of the whole region of Country out of which his grant was to be satisfied. If then his grant did not attach to some Spot, if it had not Locality given to it by some Act of measurement, Survey or other means of identity recognised by competent Authority previous to the time when the jurisdiction of Mexico over the Country ceased and the jurisdiction of the United States attached it cannot by any possibility be perfected into a complete title. The strictest rules will not be applied, but such identity as will enable the Board to ascertain with reasonable certainty where the land lies, must be established.

It has been insisted that ^{as a survey} for the purpose of ~~surveying~~ the land granted from the public domain could legally be made after a change of jurisdiction had taken place, and after the date of the treaty ceding all the public lands to the Government of the United States. The cases where such surveys have been allowed are clearly specified in the Authorities already quoted, and will again innumerate them in the language of Justice Nelson in the case of Bishop vs. Pinnose & How 335 he says "That in order to enable the claimant to recover the Land must have been surveyed from the general domain of the King of Spain prior to the cession of the territory by a grant which gives either in its terms or by a reference to some description, locality to the tract or if the grant was Vague, and gave only an Authority to locate, the location must have been made by the Official Surveyor." When the grant contained a reference to some description by means of which the tract granted could be designated then a survey in conformity to such description could be made subsequent to the date of the Cession but in cases where there was no such description no survey

was not allowed to be made, unless by authority of some act of Congress specially directing a survey to be then made for the purpose of dividing the tract from the public domain. The act of Congress approved February 28th 1806 executed the powers of the Commissioners who had been appointed under the act of 1805 to adjust the title and claims to lands in the territory of New Orleans and the district of Louisiana by authorizing them to direct such surveys of the claims presented as they might deem necessary for the purpose of their decision, the survey to be at the expense of the claimant. The act also declared that every such survey by what was authority theretofore made should be heard and considered a private survey only: and that all the tracts of land the titles to which might be ultimately confirmed by Congress should from the opening of the patents be resurveyed if judged necessary at the expense of the parties (Sec 3 Stat. at Large 353)

The act of 1805 required that the decisions of the Commissioners made in pursuance of its provisions should be laid before Congress for their confirmation. The class of cases to which the survey that the Commissioners were authorized to have made, was deemed necessary for the purpose of description and location were first - A grant or order of survey for a given number of acres conferring upon the grantee the right to locate it upon any part of the royal dominion at his election

2^d A grant designating some natural object only, such as the head or sources of a river, as the place where the tract should be located & How 334 - Without the power authorizing the Commissioners to direct surveys to be made in the particular cases above mentioned the claimants could never have been able to present their claims to the Board of Commissioners for their decision. The effect of the private survey which the Commissioners

were authorized to have made is fully explained in the case cited

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were authorized to have made is fully explained in the case of *Bissell vs Penrose* 8 How 335. In this case ^{the} Court say "In the proceedings before the Board of Commissioners the object of the private survey is not a divorcement of the tract from the public domain nor is this the effect it, that is done by the confirmation of the grant by the act of Congress and not before. The object is the selection of the tract by the claimant that he is entitled to locate by virtue of his general grant by means whereof he is enabled to present his claim in full to the Board for their decision" Congress had the unquestioned authority to make grants of the public domain to individuals, to be located on any of the vacant lands and unoccupied lands - and the survey was for the purpose of enlightening the judgment of Congress as to the particular locality which they would confirm to the holder of the Spanish concession. The case under consideration falls clearly under the first class for which the law of 1806 was intended to provide a remedy viz: where there was a right to locate on any part of the public domain - The only difference is in the extent of country to which the right of the claimant in the present case restricted by the terms of his concession, the principle is precisely the same Congress have failed to provide the same remedy in the law of 1851 which they inserted in the law of 1806 and this Board of Commissioners have no right to assume a power which exclusively belongs to the Legislative Department. Without some special provision of law similar to that contained in the act of 1806 the class of cases to which the one before us belongs will be wholly without remedy; and the parties interested must look to Congress alone for relief. It has been insisted that the law of the 3^d of March 1851 relieves this Board of Commissioners from the

responsibility of ascertaining of the boundaries of claims submitted to them for adjudication and settlement, and devolves that duty on the Surveyor General. The passage of the Law relied on in support of this position is to be found in the 13th Section which defines the duty of the Surveyor General in the following words: "Whose duty (meaning the Surveyor general) it shall be to cause all private ~~claims~~ ^{claims} which shall be finally confirmed to be accurately surveyed, and furnish plans of the same and in the location of the said claims, the said Surveyor general shall have the same powers and authority as are conferred on the Register of the Land Office and the Receiver of the public monies of Louisiana by the sixth Section of the act to create the Office of the Surveyor of public Lands for the State of Louisiana approved March One thousand Eight hundred and thirty one." The sixth Section of the act referred to in said ^{act} of 1851 or that part of it which relates to the duty of the Land officers in cases of a conflict of claims is as follows: "That in relation to all such confirmed ^{claims} ~~lands~~ ^{claims} which may conflict or in any manner interfere with each other the Register of the Land Office and the Receiver of public monies for the proper Land District are hereby authorized to decide between the parties and shall in their decisions be governed by such conditional lines and boundaries as have been or may be agreed upon between the parties interested either verbally or in writing; and in case no lines or boundaries be agreed upon between the parties interested the said Register and Receiver are hereby authorized to decide between the parties in such manner as may be consistent with the principles of justice and it shall be the duty of the Surveyor general to have those claims surveyed and plotted in accordance with the decisions of the Register and Receiver." The same power and authority are conferred on the Surveyor General of California which the passage just quoted confers on the Register and

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Records of the different Land officers in the State of Louisiana under different Acts of Congress private Land claims on that State were submitted for Confirmation to Boards of Commissioners as well as to the Courts, the tribunals authorized to make Confirmation fixed the boundaries, and it so happened that in some instances the boundaries of adjacent claims conflicted and interfered with each other which it can readily be perceived might frequently occur. The Register and Receiver were authorized to settle all such cases of conflict and interference and in making their decisions, they were to be governed by any Agreement which the parties might have made, as to Conventional lines, but if the parties should refuse to agree upon any line or boundary, then the said Officers were authorized to decide between the parties, and fix such line as might be consistent with justice. It was only in cases of conflict they had any authority to interfere, and it is only in such cases that the Surveyor General of California is authorized to interfere and then his authority only extends to the points of conflict and not to the general boundaries by which the tract is defined and identified. In a case where there is no conflict or interference the Surveyor General must cause the claim to be surveyed and plotted in conformity with the decree of Confirmation. To give the construction to the power thus conferred on the Surveyor General which has been asked for, and insisted upon by different Counsel who argued the same point in different cases would be to confer upon that Officer not only the judicial but also the granting power which Congress never intended should exist in one and the same person or tribunal. It has been said that the validity of the grant, that is the genuineness of the letter patent, is the only duty which the Act of 1851 assigned to this Board of Commissioners and that the question of location and boundary is devolved upon the Surveyor General. I am unable to comprehend

the distinction here taken. The validity of the grant is in my judgment inseparable from the identity of the thing granted. The ascertaining and settling claims are declared in the very first section of the law creating this Board, to be the purpose for which it was constituted. To carry out this primary object of the law it is our duty, first, to investigate the paper title upon which any claim presented for confirmation rests, and our decision establish its genuineness. Secondly, it is our duty to ascertain the identity and locality of the precess lands embraced by such paper title in order that the same may be surveyed and plotted in conformity with the requirements of the Law. If the construction contended for should be adopted, and the whole duty of ascertaining the boundaries and locations of all the lands contained in the different grants which have been submitted to this Board for settlement and adjudication were devolved on the Surveyor General, his powers would be most extraordinary and startling. By the 6th section of the act relating to the duties of Registers and Receivers in the State of Louisiana, the Surveyor General would be authorized in cases where the parties do not agree, to fix arbitrarily the boundary lines between them, and from his decision there is no appeal. The provision of the Law of 1857 which allows appeals from the decisions of this Board to the District & Supreme Court of the United States would as regards the question of boundary if the construction asked for was permitted to prevail be defeated altogether, and that most important question could never be taken before the highest tribunal for final decision. The construction claimed does not confine the interferences of the Surveyor General to cases of conflict between parties, but extends his powers to all cases of boundary and location which go to establish the identity of the lands granted. It would seem that the terms of the Law from which the Surveyor General derives

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all his powers to interfere, need only be stated to be comprehended. If the Law did involve any such power on the Survya General, he could now execute it.

Suppose the duty of the Board in the present case, ceased when they had investigated and pronounced the title papers presented by the claimant to be genuine. The duty of the Survya General would then begin. The eight leagues of land thus confirmed must be surveyed and located by that Office. What point would he establish, from which to commence his survey? No point of beginning is to be found in the papers or on the map. Which of the eight leagues of all the immense region of country embraced within the boundaries out of which the claimant's grant was to be satisfied, would the Survya General set apart, as the particular eight leagues which the Mexican Government intended to grant. It is true he might arbitrarily fix any point of beginning, and from that proceed to measure off eight square leagues of land, but would the land thus measured and separated from the map of the other public lands be the same land granted by the Mexican government to the claimant. If it would not be the same it would be a new grant made by the Survya General a power which I apprehend Congress never intended to confer on that Office by any of the provisions of the Law of 1851 or by any other Law.

After having given to the case the most careful consideration, the conclusions at which we have arrived are

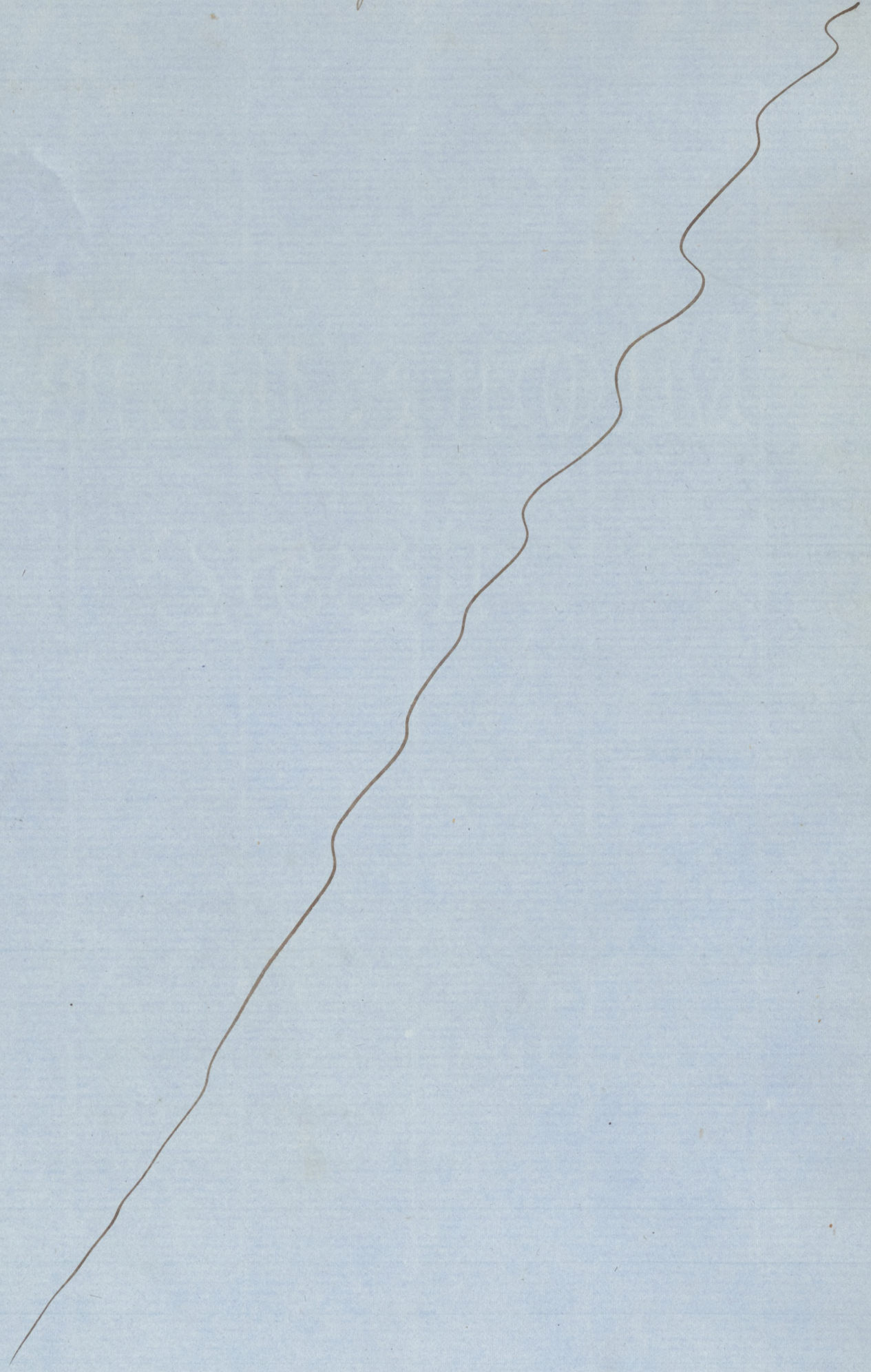
- 1st That the evidence produced by the claimant does not establish in him the legal title to the eight square leagues of land mentioned in his grant of the 11th of February 1845.
- 2^d That he has failed to establish such an equity as would render under the laws of Mexico have been binding on the government of Mexico to complete his title if he had presented his claim to that government for confirmation.
- 3^d That the description of the land is so vague and indefinite that it is incapable of being ascertained or located by the

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Surveyor General

4th That at the time a change of jurisdiction ^{took place} no right of private property was vested in any particular right leagues of land, but that the legal title to the same passed to the United States under the terms of the treaty of the 2^d of February 1848 unaffected by any Equitable vested interest. For these reasons we are of ^{the} opinion, that the claim in this case should be rejected.



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Hennepin Huber }
 65 } Amcut
United States }

Opinion of Com.
Thompson

I dissent from the Opinion of the Board as delivered in this case so far as it conflicts with my views presented in the dissenting opinion which I file in Case No 2 I also dissent from the construction given to the 11th and 12th Articles of the Ordinance of the 31st of November 1828 and from some of the views contained in it resulting from that construction, in relation to the effect of the conditions inserted in the grant

These articles have reference in my Opinion exclusively to Contractors or Empresarios and not to families or individuals

As I agree generally with the conclusions to which the Board has arrived I have not thought it necessary at this time to give the reasons for that opinion but will take occasion to do so in some other case in which the question is presented.



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Enrique Stubbs

vs

The United States

Decree

In this case on hearing the proof
an allegation it is adjudged by the Commission that
the claim of the petitioner is not valid and it is
therefore decreed that his application for a confir-
mation thereof be and the same is hereby denied

Alpheus Felch
Thompson Campbell
R. A. Thompson

Commissioners



Office of the Board of Commissioners,

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

I, *George Fisher*, Secretary to the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, do hereby certify the foregoing *Twenty-two* pages, numbered from 1 to *72*, both inclusive, to contain a true, correct and full Transcript of the Record of the Proceedings and of the Decision of the said Board, of the Documentary Evidence and of the Testimony of the Witnesses, upon which the same is founded, on file in this Office, in Case No. *139* on the Docket of the said Board, wherein *Henrique Huber* is

the Claimant against the United States, for the place known by the name of *"Boncut."*

In Testimony Whereof, I hereunto set my hand and affix my private Seal (not having a Seal of Office) at San Francisco, California, this *Twenty-seventh* day of *July* A. D. *1854*, and of the Independence of the United States of America the seventy-*eighth*

G. Fisher
Geo. Fisher.

Sy.



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U. S. DISTRICT COURT,
District of California.

No. ~~57~~ - 51-NL

THE UNITED STATES,

vs.

Enrique Huber
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TRANSCRIPT OF THE RECORD

FROM THE
BOARD OF U. S. LAND COMMISSIONERS,

In Case No. 159

Filed, July 26 - 1854

Wm. M. ...
By Alex. M. ...

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United States District Court for the
Northern District of California.

Enrique Huber Petitioner of Appellant
Appellant praying the Court to review
vs the decision of the U.S. Land
United States Commissioners.
Appellees.

Your Petitioner Enrique Huber respectfully shows
to this Honorable Court.

That on the 11th day of February A.D. 1845, Manuel Micheltorena Governor of the Californias by virtue of authority in him vested, granted to your petitioner the tract of land known by the name of "Moncut", situated in the then jurisdiction of Sacramento in the Department of Upper California, and in the now Counties of Yuba and Butte in the State of California, containing eight square leagues of land, a little more or less, with the boundaries described in the petition to the Governor for said land, in the diseño which accompanied said petition and formed part thereof, and in the concession or grant made by the Governor as aforesaid.

That on or about the 14th May 1845, your Petitioner applied to the proper authority of the said District for the juridical possession of said land, which was duly given him, in the same month and year.

Your Petitioner further shows that he performed all the conditions annexed to said grant by the Mexican government, within the time specified by the grantor - that immediately after the concession he entered upon the possession of the land, and cultivated parts of it - and stocked it with Cattle, and has continued by himself, his agents, and assigns to possess the same ever since, excepting certain parts thereof from

which he has been expelled by fraud and violence.

Your petitioner further shows that the said tract of land is situated in the northern District of California.

Your petitioner further shows, that on the 5th day of April A.D. 1852 he presented his claim for the said tract of land before the United States Land Commissioners, appointed under the act of Congress passed on the 3rd March 1851, entitled "an act to ascertain and settle the private land claims in California" when sitting as a Board, and prayed the said Board to confirm it; and that the said Board on the 12th day of October A.D. 1853 decided on the validity of the said claim and rejected it.

Your Petitioner prays that the manuscript of the report of the Board of Commissioners, in the claim presented by them as aforesaid, and the documentary evidence, and testimony of the witnesses on which it was founded, which is filed with the Clerk of this Court as directed by the 12th section of the act of Congress passed on the 31st August 1852, entitled "an act making appropriations for the civil and diplomatic expenses of the government, for the year ending the thirtieth June 1853, and for other purposes," may be held and considered as part of this petition, said transcript having been filed July 26th 1854, & notice of appeal, on the 24th of Nov. 1854.

Wherefore your Petitioner appealing from said decision of the Board of Commissioners, presents this petition to the Honorable the District Court for the northern District of California, being the District Court of the District in which the land claimed is situated, and he prays this Honorable Court to review the said decision of the said Board of Commissioners, and to decide upon the validity of his claim, and to make a decree confirming it.

Hallam Peckey & Billings
Attys for Claimant.

No 51.

U. S. District Court.
Northern District of California.

Enrique Mubers
Appellant

vs

United States
Appellee.

Petition on appeal.

Filed Nov. 24. 1834
J. M. M. M. M.
CB

CASE 51 ND
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Halleck Tracy & Bellamy
Appellant's attorneys.

United States District Court for the
Northern District of California.

Enrique Huber, Appellant. Notice of intention to
vs prosecute the appeal from
The United States, Appellees. the decision of the Board
of United States Land Commissioners

Enrique Huber claimant of the Rancho called "Honcut",
situate in the counties of Yuba and Butte in the
Northern District of California, hereby gives notice
of his intention to prosecute an appeal from the
decision of the Board of Commissioners in his claim
for the said land, which was presented to the said
Board of Commissioners, and by them rejected. -
His claim being that which is numbered on the
Docket of said Board of Commissioners n^o 159, the
transcript whereof as filed in this office is numbered,
N^o 51.

Malleck Beachy & Billings
Attorneys for Appellant

24. Nov. 1854

No 57.

U. S. District Court.
Northern District of California

Enrique Huber, Appellant

vs

The United States, Appellees.

Notice of intention to
prosecute appeal.

Filed Nov. 24. 1834
Jno. A. [unclear]
[unclear]

CASE 51 ND

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Halleck Peachy & Bellings
Attorneys for Appellant.

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

The United States
Appellants

vs
Eugene Huber

No 51.

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

Al. S. S. S. S.
Asst U.S. Atty

No. 51.
U.S. Dist Court

The U. States
vs
Eunque Huber
P
Answer

Filed July 16, 1855,
by Chevers
Deputy.

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Glassell

UNITED STATES DISTRICT COURT,

Northern District of California.

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*Henry Huber
vs
The United States*

San Francisco, February 3, 1856,

ON this day, before *W. A. Chivers* a
Commissioner of the United States for the Northern District of California, duly
authorized to administer oaths, &c., &c., came *Adolph
Brueheim* a witness produced on behalf of the
Claimant, Appellant
in Case No. *57*, being an appeal from the Board of Commissioners to ascer-
tain and settle the Private Land Claims in the State of California, in Case
No. *159* on the Docket of the said Board of Commissioners, and was duly
sworn and testified as follows — ~~his evidence being interpreted by~~
~~a sworn interpreter~~

PRESENT: *Henry H. Wallace, Esq.* of Claimants
Counsel, and the U. S. District Attorney
by *Andrew Cassell, Esq.*

QUESTION BY *Claimants Counsel,*

What is your name, age, and place of residence,
and how long have you resided in California,
Answer,

*Adolph Brueheim, am 34 years of age,
I reside in California, and have resided
in this country for the last thirteen years.*
2d -

Do you know the rancho called "Soncut," claimed
by Henry Huber, if yes, where is it situated, how
long have you known it
Answer,

I do, the greater part of it lays on the East side
of Feather River, and extends down from the
Mountains towards Marysville. A small
part of it lays on the West side of said River

half league wide, by two leagues in length.
I have known this rancho from early in 1845,

3^d
11

state whether it has ever been occupied, and if so, how long, and by whom.

Answer

It was occupied in 1845, and 1846, with stock. There was a house on the place. I cannot say how much stock there was, but there was a band of horses on the place, with Auber's iron on them. There were cattle on it belonging to Cordua, from 1500 to 2000 head. The house was built in 1845, and in 1846 some of the land was cultivated. Peas, beans, pumpkins, and corn were raised. Mr Auber had the house built. He employed Mr Cordua to build it. The rancho in 1845 & 1846, 1847, and 1848, was occupied by a Frenchman named Baptiste Ronell, & up to the time of his death.

4th

On what part of the rancho was the house built.

Answer.

It was built on the north side of the Soncut river, and on the East side of Haster river, on the bank of the latter, and about one and one half miles from the Soncut.

5th

Now do you know that Auber employed Cordua to build the house?

Answer.

Yes, in 1845, in the employ of Cordua, and heard them make a verbal contract to build the house.

6th

When were you last on this Rancho, and when did you last see this house.

Answer

I was last there in the fall of 1852. I then saw the house. It was then occupied by the wife and child of Rouell, Baptiste Rouell died in 1850. He was employed by Cordua to occupy the house, and to take care of the Stock on the place, belonging to Cordua and Huber.

When did you first hear of Huber claiming this land.

Answer

In the year 1844. In the latter part.

Cross examined by the U. S. District Attorney.

I have no interest direct, or indirect in the event of this Suit.

Adolph Brubheim

Sworn to, and subscribed
before me Feby 23. 1856.

H. H. Cheval.

U. S. Commissioner.

No 51

W. S. Dist. Court,

Henry Huber,
of the
United States.

Deposition of
Adolph Braheim,

Filed March 6, 1856.
By Cheever,
Deputy

CASE 51 ND

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United States District Court
Northern District of California

The United States

vs

Enrique Huber

San Francisco, Cal^{ca}

April 3rd 1856

On this day before me, Geo. Pen. Johnston, a Commissioner of the United States for the Districts of California, duly authorized to administer oaths became Charles Roether, J. C. Hays and J. Bidwell witnesses produced on behalf of the United States, in Case, No., 51, being an appeal from the Board of Commissioners, to ascertain and settle the Private Land Claims, in the State of California, in Case No., 159, on the Docket of the said Board of Commissioners, and were duly sworn and testified, as follows:

Present; The Acting U.S. Atty on behalf of the U.S. - and Mess^{rs} Mallock, Peabody & Billings on behalf of the Claimant. -

Charles Roether, being duly sworn deposes & says, as follows:

Questions by the Acting U.S. Atty.

"What is your name, age, and place of residence?"

"My name is Charles Roether, 49 years of age and reside at what is usually known as Charles Ranch Butte Co. -"

"How long have you resided there?"

"I came to California in 1845, and have resided at this place and about there till June 1846; then I was gone ten months as a volunteer during the Mexican War, - since then, I have resided there all the time. -"

"Do you know Enrique Huber the claimant in this case?"

"Yes. -"

"How long have you known him?"

"I have known him since 1845. -"

"Did you know Theodore Cordua and how long have you known him?"

"I became acquainted with him in 1845 and knew him up to the time he left California."

"Do you know of Mr. Cordua having a grant of land, and if so where was it said to be located?"

"I heard that he had a grant - on the south side of the Honcut and the east side of Feather river. -"

(The atty. for the Claimant objects to the above question and answer. -)

"Did you know John B. Rouell?"

"Did you know John B. Rouell?"

"I did."

"When did you know him, and where did he reside?"

"When I first knew ^{him} ~~it~~ was in the year 1845, and he then resided on the south side of the Yuba River."

"Did you ever know of his ever living on the north side of the Yuba and if so, where?"

"I was away from there spring of 1846 to the spring of 1847 and when I then returned ~~to~~ he resided at his old residence but after that he built a house in the fall or winter of 1847, on the south side of the Horcut and the East side of Feather River."

"How long did he reside in that house?"

"He moved from there in 1849 and built another house north of the Horcut, and East of the Feather River, — about two miles north of the Horcut."

"How far below the Horcut, was the first house built?"

"About a mile ^{or half a two} ~~or~~ miles ~~and a half~~ south of the Horcut."

"Is Rouell living or dead?"

"He died at his last residence in the winter of 1850."

"Who did he build the house south of the Horcut for?"

"I do not know, but I think he had some arrangement with Cordua, -"

"What was the business of Powell in the first house which you spoke about?"

"He raised some stock and farmed a little, -"

"Did he have any stock in charge belonging to Cordua or Huber?"

"I do not know, -"

"Did Mr. Huber ever have any stock in that country and if so how much?"

"I do not know how much, but had stock there - some Horses, -"

"Which side of the Stuncut, were this stock kept?"

"The Horses of Huber were ^{ran} ~~driven~~ all over the country ^{and were driven to consist} ~~so far as~~ where Marysville is now, -"

~~Who did~~

"Where did you reside after your return from the war?"

"After I came back I stayed awhile at what was called the Cordua Ranch - I then went to a place called Charlie's Ranch, ^{it was called so after me} in the north side of the Stuncut - and east side of Feather River, -"

"How far from the mouth of the Stuncut?"

"About two miles, -"

"What time did you go there to reside?"

"I went there to reside in the fall of 1847, -"

"How long did you continue to reside there?"

I have continued to reside about there ever since."

"Did you make any claim yourself for land where you resided?"

"I did."

"About how large a tract - did you make a claim for?"

"I made a claim for all the land around there - about a mile in extent - and when other people came in they made lines of division."

"At the time you settled there did you know of any other claim for that land?"

"I did not - but had heard one talked about."

"Was Huber aware that you were residing there and making claim to this land?"

~~He did not~~

~~He did not know that~~

The witness says that ^{he did not know that Huber knew} ~~Huber did not know~~ that he claimed the land until 1848."

"State whether you had any conversation with Huber in 1848, with regard to this land, and if so, what was that conversation?"

(Objected to by the Atty - for the Claimant.)

"He asked me where I lived, and I told him that I lived on the tract of land above mentioned."

~~Mr. Huber~~ The witness says that he was very sick at the time of the conversation with Mr. Huber and does not recollect that Mr. Huber made any objection to his living there."

"Did Mr. Huber ever inform you that he had a grant to that land? if so, when?"

"He never told me so positively, - I knew that Mr. Cordua wished to buy some land of Mr. Huber but he would not sell - I do not know what land was alluded to, but I think that it was the land spoken of above. -"

"Have you sold your claim to that land, and if so when and to whom?"

(Objected to by the attys for the Claimant. -)

"I sold it to a company of three men, Frederick Peckes, Green Moore, & Miles Shurlow. -"

"Did you have any knowledge that the land was granted at the time you sold it?"

"No other knowledge than what I had heard in 1845; - no other knowledge than the talk about the trade between Huber and Cordua. -"

"What became of the house that Rouell built north of the Street and east of the Beattie River?"

"I bought it myself at the administrators sale of the Rouell in the spring of 1851, - and I still own it. -"

"Has Huber or Cordua ever claimed that house of yours?"

"Not that I know of. -"

(The above question and answer objected to by the attys for the Claimant. -)

"State whether that conversation in 1848 with Huber

if Huber said anything with regard to obtaining a grant but that as he had not got it - he was glad the witness (Charles Koetter) had got it? "
(Objected to by the Atty. for the Claimant.)

"I do not know any thing positive about it."

"Did any one object to your occupying that land prior to 1849?"

(Objected to by the Atty. for the Claimant.)

"I do not know of any one."

"Did any one notify you of a claim adverse to your own prior to 1849 or 1850?"

(Objected to by the Atty. for the Claimant.)

"I do not know of any."

Questions by the Atty. for the Claimant.

Cross Examination -

"When did you first know Cordua?"

"In the year 1848."

"Where was he living at that time?"

"He was living ~~where~~ at a place now called Marysville, and then known as Cordua's Ranch."

"Do you know where Cordua is now or where he has gone?"

"I do not -"

Direct examination resumed.

Questions by the Acting U.S. Atty.

"Was that land occupied by any one but yourself from 1847 until 1848 or 1849?"

It was not — From 1845 till 1847 I was away
from the place —

Sworn to subscribed, } Charles R. Ketcher
before me this 3^d }
day of April A.D. 1856. }

Geo. Pen. Johnston U.S. Commissioner

John C. Stays being duly sworn deposes
and says —

Direct examination. —

Questions by the Acting U.S. Dist Atty. —

"What is your name age and place of residence?"

"John C. Stays, 40 years of age and reside in the
city of San Francisco." —

"What office do you hold?"

"I hold the office of Surveyor General for the
state of California." —

"State whether the original papers, filed in the
office of the Board of Commissioners to ascertain
and settle the private land claims, in the
state of California have been filed in your
office?"

"Yes." —

"Are you now the Custodian of those original
papers?"

"Yes, I am." —

"State whether the papers purporting to be the originals in the case of Enrique Huber against the United States case No 119 in the Board of Land Commissioners are now in your office?"

"They are."

"Please produce ^{the original} document ~~A~~ annexed to the deposition of Juan Castañeda filed in the office of the Land Commission May 3rd 1852?"

The document was here produced by the witness.

Sworn to & subscribed, J. M. Kearney
before me this 3rd day of April
A.D. 1856

Geo. Per. Johnston, U.S. Commissioner

John Bidwell being duly sworn deposes & says as follows;

Direct Examination.

Questions by the Acting U.S. Dist Atty.

"What is your name age and place of residence?"

"John Bidwell, 36 years of age, and reside at Chico in Butte Co. Cal."

"How long have you resided in California?"

"Since 1841."

"When did you reside in 1844 and 1845?"

"I resided at Sacramento."

"State whether you ~~was~~ ^{were} acquainted with Juan Michel Comuna in the year 1845, and prior to that time?"

"I was."

"In what capacity was he acting at that time"

in California?"

"He was the Governor of California from the 1842 till the latter part of February 1845."

"How long had you known him prior to the latter part of February 1845?"

"I knew him personally from March 1844 till he left the County."

"Are you acquainted with his signature?"

"I am -"

~~Please look at document.~~

"What are your means of knowing the signature of Governor Michel Sorensen?"

"I have seen him write it a great many times."

"Please examine document ~~to~~ presented by John C. Hays ~~sergeant~~ General purporting to be the original petition and grant on file in this case, and state whether ~~that~~ is the signature of Governor Michel Sorensen, which purports to be subscribed to said grant, is the genuine signature of Gov. Michel Sorensen?"

"I cannot say positively that it is the genuine signature as it differs in some respects from the manner in which I have seen him sign it."

"From your knowledge of his hand writing do you believe that to be his signature?"

"In looking at it I should not take it to have

been written by him and I should not take it to be his signature written by himself. —"

"Examine the Rubric, the signature and the body of the Instrument and say whether they are written with same kind of ink. —"

"The name and the body of the Instrument appears to me to be written with same kind of ink, but the Rubrica seems to me to be different — but I am not much of a judge of ink. —"

"Was it the Custom of Michel Torrenna to append the Rubrica to his name? —"

"It was, always. —"

"Where were you on the 11th February 1848? —"

"I was marching towards Los Angeles, somewhere between Santa Barbara and Los Angeles, — I was marching with Michel Torrenna. —"

"Were you in Company with him daily about that time? —"

"I was. —"

"State whether Michel Torrenna was in Santa Barbara on the 11th February 1848? —"

"I think not, I think he was below Santa Barbara on the 11th February. —"

^{Question and answer}
(Objected to by the Atty. for the Claimant. —)

"Are you confident that he was below Santa Barbara at that time? —"

"I am. —"

Did you hold away

"Did you sustain any peculiar relations to Capt. S. A. Sutter in 1845 - and if so what were they?"

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"From April 1845 - during the remainder of the year, I was acting as clerk to Capt. John A. Sutter. -"

"Did Capt. Sutter hold any office at that time and, if so, what, was it?"

"He was Lieut de Pag - and he was the military Commandant of the Province of Sacramento. -"

"Did your position as clerk relate to ^{Capt. Sutter's} his official duties or acts?"

"No - not particularly. -"

"Did you have access at that time to the official records of Capt. Sutter, and were you familiar with his official acts -?"

"Capt. Sutter never kept any official records that I know of, - I generally wrote all answers to any official letters, the originals were kept by himself. -"

"During the time you were Capt. Sutter's Clerk, if Capt. Sutter in his official capacity had given judicial possession of the land under the grant in evidence, would you have been likely to know of it -?"

"If he had given possession of it, by going upon it which was the usual way, I think I should have known it. -"

(The above Question objected to by the Atty. for Claimant.)

"Did you know of Capt. Sutter's giving judicial

possession of the land to Huber or to any other person during the year 1845 or any time after?"

"No - I do not; -"

(The above Question Objected to by the Atty. for Claimant.)

"How long did you reside at Capt. Sutter's?"

"From the beginning of April 1845 - till July 1846."

"When did you reside from July 1846 up to the year 1851?"

"I was in the War in 1846, and the beginning of 1847 I returned to Sacramento, - from that time until 1851 I was in the habit of travelling through the country. -"

"Were you acquainted with Huber from 1845 up to the year 1851 -?"

"I was. -"

Questions by the Atty for the Claimant. -

Cross Examination. -

"Look at the document I referred to in the examination in chief, and state in whose hand writing is the body of the petition asking the Governor for a grant of land -?"

"I do not recognise the handwriting. -"

"Do you know the signature of Huber.?"

"I do not know it well enough to recognise it, I have seen him write it but am not sufficiently acquainted with it, to swear to it. -"

"In whose hand writing is the body of the grant of that instrument?"

"I do not know."

"Why do you suppose that signature not to be that of Michel Torrenno, and in what does it differ from his signature?"

"Because Michel Torrenno always writes a heavier hand, than the one here shown to me."

"Would not the apparent heaviness of the handwriting, depend upon the pen that was used?"

"I presume it was;— But it was customary to use a quill pen when writing on Mexican paper."

"Examine that signature, and tell me whether the letters are not shaped like the ^{letters in the} usual ~~letters~~ in the ^{usual} signature of Michel Torrenno?"

"The general shape of the signature shown me, and letters resemble those of Michel Torrenno, with the exception of the angles of the letters which are here sharper than those which I have seen him make."

L

Direct Examination resumed.

Questions by the Acting U.S. Dist Atty.—

"When did Huber reside from 1845 till 1857?"

"In 1845 he resided at Sacramento - In 1846 he came

to San Francisco and I believe he has resided

to San Francisco and I believe he has resided
here ever since, - "

"Did he ever reside on the land in question
~~on~~ the Honcut and Feather river subsequent to
the 1st of Jan'y. 1845? "

"No - not to my knowledge; - If he had I should
~~be~~ be likely to have known it, - "

"Are you acquainted with Juan B. Cordua?"

"I am; - I knew him from 1844 up to the
time of his death in 1850. - "

"Do you know of his building any houses
above Yuba River, if so state what you know?"

"He built a house on Feather River on the land
that was granted to Cordua in 1847. This house
was located near the Honcut-Rancheria on the
East bank of Feather River, about two or three
miles below the mouth of Honcut creek, - south
of Honcut creek. He lived there until 1849 -
He built another house three or four miles above
Honcut Creek on Feather River in the fall of 1849 -
He resided at this place, until the time of his
death. - "

~~Do you know for whom he built the first house?~~

"Do you know Cordua?"

"I do. - "

"Do you know anything of Cordua's having stock
and if so where was it herded, and who herded
it?"

"Mr. Cordua had a great deal of stock, which was herded between Yuba^{river} and Horcut-creek, and on the east-side of Feather river. This stock would be on the south of Horcut creek."

"Was Cordua's stock herded at any time on the north side of Horcut-creek?"

"Cordua's stock was confined to the south side, but occasionally a stray one would get over."

"Was there any stock herded on the north side of Horcut-creek, during the year 1841, or subsequent to that time until 1850?"

"No - not that I know of."

"Do you know whether Huber had any stock?"

"I never knew that he had any, - except a few head of horses."

"If he had, had much stock would you be likely to have known it?"

"I think I should."

"Were you familiar with Cordua's business at that time?"

"Not particularly."

"Do you know whether he ever had a tent burned?"

"I do not remember."

"Do you know whether Rowell made any claim to the land, on the north side of the Horcut for himself?"

(Question objected to by the atty for claimant.)

I understood that he made a claim for himself. I think that it was from a conversation with him that I learned this."

Cross Examination. - Questions by Atty for Claimant.

"When did Michel Torrenna leave Santa Barbara in the winter of 1845?"

"It must have been in the early part of February during the first week. He arrived in Los Angeles on the 23^d February."

"^{What are} ~~What~~ are your data for these dates?"

"Remember it from the fact of the famous battle of Cahuenga which was fought on the 22^d Feb'y, and the next day we reached Los Angeles, on the 11th Feb'y - we were about midway between Santa Barbara and Los Angeles."

"Was not Michel Torrenna in the habit of transacting official business in camp pertaining to his civil duties?"

"I do not know - He frequently received despatches from Monterey, which was the Capital, and sent expresses to Monterey with despatches. - But I do not know the nature of the official business which was transacted."

"How long did he (Michel Torrenna) remain in Santa Barbara?"

"He was there three or four days."

"Where was Capt. Sutter living in 1845?"

"He was living at his fort on the Sacramento after his return from the Campaign."

"Was he with Michel Torrenna in going from Santa Barbara at the time you mentioned?"

"Yes - he was."

"From whom did Cordua obtain his land of which you speak?"

"From Michel Torrenna."

"Did Capt. Sutter at that time claim any lands between the Yuba and Feather rivers?"

(The Atty. for the U.S. objects to the above question.)

"Yes."

"Do you remember whether there was ever any difference between Capt. Sutter and Mr. Huber with regard to their boundaries?"

"No - not that I know of. - I never understood that their boundaries joined - The Cordua grant intervened."

"About where was the Southern boundary of Cordua's land?"

"The southern boundary of Cordua's ranch was the parallel of 39 degrees 33 minutes and 40 seconds - which was Sutter's northern boundary, - ~~Cordua's~~ Capt. Sutter claimed as nearly as I can estimate about 8 or 10 miles above the Yuba river from which point Cordua's land began."

"Do you know any thing of Cordua having been

in possession of any land belonging to Mr. Huber
at any time? "

"I do not. -"

"Was Manuel Jimeno with Michel Torrens
on that Expedition? "

"No - he was not. -"

"Who was the secretary of Michel Torrens during
that Expedition? "

"I do not know - I think that Don Luis Marcial
acted as his secretary. -"

"Do you know Castañeda? "

"I do - He was with Michel Torrens on the
Expedition of which I have spoken - He was styled
Captain. -"

Sworn to & subscribed,

before me this 3^d day of April,

A. D. 1856. - Geo. P. Johnston U.S. Com^r

Examination of the balance of the witnesses
adjourned until 10 o'clock on the morning of
April 4th A. D. 1856 - to-morrow. -

Geo. P. Johnston U.S. Com^r

San Francisco Cal^a April 4th 1856

On this day the examination of balance of witnesses in
the foregoing adjourned from yesterday is resumed: -

Charles Covilland & Michael C. Nye, witnesses on behalf
of the U. S. were duly sworn & testified as follows:

Charles Covilland being duly sworn deposes & says as follows:

Direct Examination. -

Questions by Acting U.S. Dist Atty. -

"What is your name, age, and place of residence?"
"Charles Covilland, 39 years of age, and I reside at Marysville."

(Direct examination here interrupted.)

(Examination by Claimant's Counsel touching the witness's interest. -)

"Are you in any manner interested in defeating the claim of Mr. Huber?"

"I have no interest in it whatever."

"Are you not the owner of some ^{land} in the neighborhood of and adjoining this land claimed by Mr. Huber?"

"Yes, I am."

"Has there been no dispute or difference between Mr. Huber and yourself in regard to the dividing line between you?"

"Yes, I think there was."

"Is the tract of land in dispute between you of any value?"

"It is, of very considerable value; - Mr. Huber claimed the whole grant."

"Under whom do you claim?"

"I claim under Cordua."

"Do you know which is the elder grant, Huber's or Cordua's?"

"I think Cordua's is the oldest."

Direct Examination - resumed; Questions by Acting U.S. Atty. -

"Is not the Horcut ~~boundary~~ the northern

boundary of Cordua's claim? "

"It is."

Question and answer objected to by the Atty for
Claimant.

"How long have you lived in California and where?"

"I have lived in California since 1846 (19 Oct), and
at Marysville most of the time."

"Did you know Thomas Cordua and if so how
long did you know him?"

"I did know him — ~~from~~ since 1846, and until
he left the country."

"Were you in his employ, and if so at what
time?"

"I was in his employ from January 1847, till
January or February 1848."

"Were your relations with him of a friendly
and confidential character?"

"They were."

"Do you know of his ever having leased any land
from Stubbs between the Feather and Yuba Rivers?"

"Not to my knowledge."

(Objected to by the Atty for the Claimant.)

"Would you have been likely to know of it if he
had done so?"

"I would, as I attended to a great deal of his
business."

(Question and answer objected to by the Atty
for the Claimant.)

"Do you know of Ronell having built a house east of Feather River and south of the Homest?"

"I do. —"

"When did he build it?"

"He built it in the summer of 1847."

"Who did he build it for?"

"He built it for Cordua, — under a lease for Cordua — this lease was for me a two years — I was present myself and saw the lease signed and witnessed it myself. —"

(The answer objected to by atty. for claimant.)

"What were Ronell's duties as a tenant of Cordua?"

"He was cultivating ground there for himself."

"Did he have charge of Cordua's stock?"

"He did not. —"

"Did he have charge of any stock belonging to Huber?"

"Not that I know of. —"

"Did you buy out all Cordua's property in that country?"

"I bought one undivided half in fall of 1848, of all Cordua's horses, cattle and land. —"

"Did you at that time know or learn of any lease from Huber to Cordua of land in the neighborhood of Homest?"

"I was a partner of Cordua at that time, and had access to all his papers and saw nothing of such lease nor did I ever hear of any. — If

... I should have seen it

There had been one I should have seen it as I had bought me half of Cordua's interest. -
(Question and answer objected to by the atty. for the Claimant. -)

"Is the house of Rowell that you speak of on the Cordua grant?"

"It is. -"

"Did Rowell afterwards build another house and if so when and where?"

"Yes he did, - some time in the year 1849 he built another house three miles north of the Hencut and East of Beathur river. -"

"Do you know what induced him to build that house?"

"He told me that he built it for himself to live in. -"

"Did he ever have any stock at that house belonging to Huber or Cordua?"

"Not to my knowledge. -"

"Did Huber ever have any stock running north of the Hencut -?"

"I never heard that he had any, - during the time I was there. -"

Cross examination - Questions by Atty. for Claimant. -

"How long have you known Mr. Huber?"

"The first time I knew him was in the month

of August or September 1848 at Park's Bar,—"

When was Mr. Cordua living when you first knew him?"

"He was living at Marysville,—"

"Was he at the time you first knew the owner of the Ranch known as Cordua's Ranch?"

"He was at that time, and he showed me his papers,—"

"Was his house on his own land?"

"The house in which he lived was on the land leased from Sutter,—"

"How long had he been living there?"

"He told me he had been living there since 1841,—"

"How far was the house in which he was living from Forest Creek?"

"I should think about ten miles,—"

"Did you ever see Mr. Huber at his house?"

"Never at that time, - I saw him at the house in 1848,—"

"What he was doing there then?"

"He came to trade with Cordua and myself,—"

"When did you first see Mr. Huber's title?"

"I have never seen his title papers,—"

"How do you know that Mr. Kouell had no stock in charge for Mr. Huber?"

"~~He~~ I do not know of my own knowledge

that he had no stock of Huber's in charge -
I know that when Russell was living south of
the Horcut that he did not have any stock
in charge for Huber. - "

"Did you ever see any horses or cattle bearing
the brand of Mr. Huber about there?"

"I never did. -"

"When did you purchase Cordua's interest?"

"In September or October 1848 I purchased
~~Cordua's interest - one half of his interest~~
Cordua's interest - in one half of all his
lands, stock, the lease from Dutten and
every thing else belonging to him. -"

"When did you purchase the other half?"

"I did not purchase it directly from Cordua -
but from Michael C. Nye and William Foster
to whom Cordua had sold it. -"

"When did you buy from them?"

"In October 1849. -"

"Was there ever any difficulty between yourself
and Mr. Cordua after 1849?"

"There was not. -"

Sworn to & subscribed

before me this 4th day of April

A.D. 1856. - Geo. Par. Johnston U.S. Commissioner

Michael C. Nye, being duly sworn, deposes & says, as follows:
Direct Examination - Questions by the Acting U.S. Atty.

"What is your name age and place of residence?"

"Michael C. Nye, 35 years of age, and I reside at Marysville."

"How long have lived in California?"

"I came to California in 1841."

"Where have you lived since that time?"

"I have lived in Yuba County."

"Do you know Henry Huber and Theodor Cordua & if so how long?"

"I do;— I have known Huber since 1841, and Cordua since 1842."

"Do you know of Cordua's having a grant of land between the Yuba & Feather River?"

"I do."

"Did you ever have charge of any stock belonging to Mr. Cordua and if so when?"

"In 1843 I had charge of some, and also in 1844."

"Where was that stock then kept?"

"Between the Yuba, Feather and the Stomest."

"Did Mr. Cordua ever build or cause a house to be built on that land and if so when?"

"Mr. Cordua built a house in 1843 on the ~~right~~^{site} of Marysville."

"Did he ever build any other house or cause one to be built in that neighborhood, and if so when?"

"He had one built by Rowell south of the

"He had one built by Rouell south of the
Houent and east of the Peather river in
the year 1847. —"

"Did you know Rouell at that time?"

"I did. —"

"Did he have charge of any stock belonging
to Cordua or Huber?"

"Not to my knowledge. —"

"Would you have been likely to have known
it if he had?"

"I would. —"

"Did Huber ever have any stock in that
country?"

"He had a few horses, from three to five —
Where were they kept?"

"At Cordua's ranch when Marysville is now. —"

Sworn to & subscribed, J. M. Rye
before me this 4th day
of April, A.D. 1856. —

Geo. Pen. Johnston

U.S. Commissioner

U.S. District Court
Northern Dist. of Cal^{ca}

No 51

The United States

vs

Enrique Huber

Depositions of Charles
Porter, J. C. Hays & J.
Widwell, Charles Corilland
& Michael C. Nye, witnes-
es, produced on behalf of
the United States, -

Filed April 7, 1856,
Chivers,
Deputy.

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UNITED STATES DISTRICT COURT,

CASE 51 ND Northern District of California.

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The United States.

Enrique Huber, San Francisco, Sept: 12th 1856,

ON this day, before *John A. Mason* a
Commissioner of the United States for the Northern District of California, duly
authorized to administer oaths, &c., &c., came *Ernest Rufus*

Claimant a witness produced on behalf of the

in Case No. *51*, being an appeal from the Board of Commissioners to ascer-
tain and settle the Private Land Claims in the State of California, in Case
No. *159* on the Docket of the said Board of Commissioners, and was duly
sworn and testified as follows — ~~his evidence being interpreted by~~

~~a sworn interpreter~~

PRESENT: *H. W. Wallcut, Esq., of Counsel for*
Claimant, and Wm. Blanding,
Esq., U. S. Dist. Attorney,

The United States, appellee
 vs
 Enrique Huber appellant }

1st Question What is your name, age, and residence and how long have you resided in California

1st Answer. My name is Earnest Rufus; my age is 46 years; I reside in Sonoma; I have lived in California since the latter part of 1842.

2^d Question Do you know Henry Huber, or the Rancho claimed by him in this case; and if yes, where is it situated.

2^d Answer I do know Henry Huber and the Rancho he claims in this case; it is on Feather River above the Yuba River.

3^d Question Do you know any thing of Huber's occupying it, and if so when and how?

3^d Ans. I do know that Huber occupied it in 1845; I was on this land in that year, Huber was living then at Cordua's house; I then saw horses and mares there with Huber's brand; I saw these horses and mares with Huber's brand about from 4 to 5 miles from the Mha up Feather river; I have never been on the land since 1845.

4th Question When and how did you learn that this ranch was Huber's, or was claimed by him?

4th Answer It was generally known there at that time that Huber owned this rancho; before I went up there in 1845, captain Sutter told me that Huber had a grant for a rancho on Feather River.

5th Question. Do you remember about how many horses you saw with Huber's brand, at the time you mention?

5th Answer. I cannot now remember how many; I saw quite a number, from 10 to 20, or perhaps more; they were with Cordua's horses.

Cross Ex. by U.S. Dist. Atty.

1st Did you ever see the grant in this case?

Answer No.

Q^d Do you know the boundaries of this Rancho and if so how and what are they?

Answer. I know one side of the boundaries - it was between Yuba and Feather River but the other boundaries I don't know. I understood the boundaries to be on the Feather & Yuba Rivers - That is what I mean when I say I knew one boundary.

3^d Question

3^d Question

What was the exact locality of Corduas House and ~~of~~^{ou} what Rancho was it?

Answer. Corduas house was at the site of the present town of Marysville. I cant say whether the House was on Corduas or Hubers Rancho.

4th In what way was Huber living at Corduas Rancho?

Answer - Apparently he was living there permanently attending to his (Hubers) stock.

5th How often did you see him there

Answer Twice - at different times in the same year - I was there once, the first time, about eight or ten days - and the second time I staid only over-night

6 I. What was Hubers cattle Brand?

Answer. A sort of an H.

2. How far was Corduas House from the junction of the two rivers?

Answer. Between one & two miles

situated on the Yuba River -

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~~PAGE~~

Ernest, Rufus.

Sporn to, and subscribed
this 12th September,
1856, before me,
J. M. Moore
U. S. Commissioner

No 51

A. S. Pitt, Comr.
N. D. of California,

The United States,

— Cas —
Ernest, Rufus,

Deponent of
Ernest, Rufus,

Filed Sept. 12, 1856,
Chester,
Deputy.

CASE 51 ND

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UNITED STATES DISTRICT COURT,
Northern District of California.

Enrique Sutter

vs
The United States. } San Francisco, Sept: 19. 1856

ON this day, before John A. Monroe, a
Commissioner of the United States for the Northern District of California, duly
authorized to administer oaths, &c., &c., came _____
Nicolas Alger a witness produced on behalf of the
Claimant _____

in Case No. 51, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 159 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows — ~~his evidence being interpreted by~~
a sworn interpreter

PRESENT: H. W. Hallick, Esq., of counsel
for Claimant, and Wm. Blanding,
Esq., U. S. Dist. Atty.

First QUESTION BY Claimants Counsel,

What is your name, age, and place of residence.

Answer.

Nicolas Alger, am 46 years of age, & reside in Sutter County, Cal.

II

How long have you resided in California, and in what portion have you lived.

Answer.

I have lived in California since 1841
I have always lived as above stated,
where I now live.

III

Do you know the Claimant, Mr Sutter.

and if you, how long have you known him.

Answer.

I do, and have known him since 1841.

IV

Where did Mr. Huber live in 1845 if you know.

Answer.

He then lived on his rancho on Feather River, which is about six or eight miles above the Yuba River, & above Sutter's line.

V

Do you know whether he had any stock on the rancho at that time. If you, how much, and of what kind.

Answer.

He had. He had horses which he drove from my place. He had some twenty, or thirty when he drove them from my place.

VI

Did any one help Mr. Huber drive the horses. If you, who was it.

Answer.

Yes. I let him have one of my Indian vaqueros.

VII

Where did you live at the time you speak of.

Answer.

I lived then on the Feather River about nine miles above its mouth, where I now live, which is about sixteen miles from the City of Marysville.

VIII

Do you know whether Huber took any more horses to his ranch, than those you have spoken of, in that year.

Answer.

He did. He got them from other persons.

IX

You speak of Sutter's line on the Feather river about six, or eight miles above the Yuba river. How do you know that was Sutter's line.

Answer.

Capt. Sutter showed me where his line was in 1842.

X

Who, if any one, was with you at the time Capt Sutter showed you the line.

Answer.

Mr Huber, Mr Age, Mr Kiser, and several other were with me.

XI

When did you first know of Mr Huber's claiming to own this ranch of which you have spoken.

Answer.

In the year 1845 - and in the month of March, or April of the same year that he took his horses on the ranch.

Cross examined by the U. S. Dist. City.

Do you know the boundaries of this
rancho, and if you describe them,
Answer.

I only know them from what Capt
Sutter told me. He told me it was
from the hills to the rancherias. The
name of one of the rancherias was Anicut,
I do not remember the names of the others.
They were indian names.

What sort of ^ahouse did Huber live in
at this time, and what was its exact
location.

Answer.
I do not know. I never saw the house.
Cordova told me he built the house of
and of adobe, and that it was situated
six or eight miles on the Feather
above the Yuba River.

What was the location of Cordova's house.
Answer.

On the Yuba River about a mile above
its mouth.

IV
Did Huber ever at any time live with
Cordova.

Answer.
He did, in 1845, and 1846. I was then
every two or three weeks, and saw him.

V
Was the stock of which you have spoken
driven to a place above, or below the

Doncut.

Answer.

Right below it.

VI

Now do you know the place to which
the stock was driven belonged to Saben.

Answer.

Mr Cordua told ^{me} it did.

Direct resumed.

XII

How far were the rancherias of which you have
spoken from the Flathe river.

Answer.

About one hundred yards, and below the
Doncut.

XIII

Was not one of said rancherias called Tabu,
or Babu.

Answer.

Yes.

XIV

Was not one called Tomcha.

Answer.

Yes.

Nicholas ^{his} Alquier
mark

Sworn to & Subscribed }
This 19th Sept. 1856, }
J. W. A. Monroe }
U. S. Commissioner.

No 51

U. S. District Court.

Emigre Huber.

vs -

The United States.

Deposition of
Nicolas Algier.

Filed Sept. 19. 1856,

Chemul,

Deputy.

CASE 51 ND

PAGE 123

UNITED STATES DISTRICT COURT,)

CASE 51 ND Northern District of California.)

PAGE 124

Enrique Huber,

as
The United States.

San Francisco, February 28, 1857

ON this day, before John A. Monroe, a
Commissioner of the United States for the Northern District of California, duly
authorized to administer oaths, &c., &c., came John A. Satter,

~~_____~~ a witness produced on behalf of the
Claimant.

in Case No. 57, being an appeal from the Board of Commissioners to ascer-
tain and settle the Private Land Claims in the State of California, in Case
No. 159 on the Docket of the said Board of Commissioners, and was duly
sworn and testified as follows — ~~his evidence being interpreted by~~

~~a sworn interpreter~~

PRESENT: H. W. Stallick, Esq; Counsel
for Claimant, and W. Blodding, Esq,
U. S. Dist. Atty.

QUESTION BY

Counsel for Claimant —
Do you know the Rancho
claimed by Enrique Huber in
this case, or when he applied
for it, to whom, and at what
times? If so state what you
know on the subject.

Answer I do: he applied for it in
the year 1843, to Micheltonens,
Mr Huber went personally to
apply to Micheltonens.

That petition was either lost or
kept intentionally in Monterey
and not acted on. He made

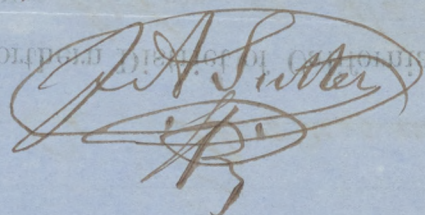
another petition in 1844 or 1845.
which was sent to Micheltonens
during his Campaign - The
second petition was acted on
and a grant made - Under the
second ~~grant~~ petition I gave the
order to take possession - a title
was given by Micheltonens, and
I gave the order to take possession
The order I do not now remember
whether it was written or verbal.
I think I did this in May 1845.
I was with Micheltonens during
that Campaign. The Title was
given in February, when Michel
tonens was in Santa Barbara.

Mr. Hubert in the year 1845
resided on the land claimed -
He did not reside in 1845 at
Sutter's Fort. I sent an order written
by Mr. Bidwell my Clerk to Mr.
Hubert for horses in the year 1845.

Mr. Hubert was then on his
Rancho.

Cross-Ed. I know Mr. Hubert had
a house and horses & cattle on
his Rancho in 1845.

Witness my hand
at this 28th Feb'y
A.D. 1857



J. A. Sutter
U.S. Com'ry

No 51.

U. S. District Court,

Erriqne Ober,

vs
The United States,

Deposition of
John A. Tattler.

Filed March 5, 1857.

W. H. Chever,
Deputy.

CASE 51 ND

PAGE 126

UNITED STATES DISTRICT COURT,
Northern District of California.

Milton Little.

— as —
The United States.

San Francisco, April 14, 1857.

ON this day, before

John A. ...

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

Mapa
John Bidwell, a witness produced on behalf of the
Claimant, *Milton Little*.

in Case No. *197*, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. *807* on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows — ~~his evidence being interpreted by~~

~~a sworn interpreter~~

PRESENT:

J. Williams, on the part of the Claimant, and the U. S. Dist. Atty.

QUESTION BY *Claimant's Attorney*.

My name is John Bidwell, 37 years old, and I reside in Chico, Butte County. I have resided in California since 1841.

x x x x x x x x x

x x x x x x x x x

Question, do you know whether or not any general Map of the Ranchos of the Sacramento was ever made under the former Government, if yes, by whom, and under whose directions was it made?

(Question objected to by U. S. Dist. Atty. on the ground that it is not competent to prove by law that such a Map existed unless it is shown that the same has been lost, and that no copy

thereof is in existence.)

Answer. I made a Map of the Sacramento Valley myself by request of Gov: Micheltorena in the fall of 1844. I delivered said Map to Micheltorena, and I do not know what became of it afterwards. Gov: Micheltorena left this Country in in the Spring of 1845. Never returned here afterwards, and have heard that he has since died, I have heard of his death within two, or three years ago. I think I could recognize a copy of said Map in its main features.

Question. Look at the map now shown to you contained in transcript N^o 301 in the District Court purporting to be a Map of the valley of the Sacramento containing thereon a certificate of Manuel Jimeno, and another of Pablo de la Guerra, and Jose Abrego, and state whether or not this is a copy of the Map you made, or not.

Question objected to by the U. S. Dist: Atty on the ground that the original of said Map is not proved to have been lost.)

Answer. I recognize said Map to be a copy of the original Map in its general features.

X X X X X X X

Question. From what source did you obtain the information, or data to make the general Map mentioned in answer to the 3d interrogatory.

Answer. From my knowledge of the Country having travelled over it a good deal.

Question. Had you access to the records, and

archives in the possession of General Sutter
and of the Government in Monterey in ma=
-King the same,

Answer, I had access to the archives of the
Government at Monterey, but no
access to the archives, or papers at Sacramen=
-to, they called it Sacramento at that date.

Question, State at what place, month, and
year you made the said map,

Answer, It was in the fall of 1844, in the month
of November, ~~1844~~ I think, that I
made the map at the City of Monterey, and
I would state here that I contemplated to
make the map some time previous to that
period.

X X X X X X X X X
X X X X X X X X X

J. Bidwell,

Sworn to, and Subscribed

before me this 14th April, 1857,

John. a. Monroe,

N. J. Comm^r -

Endorsed,

Filed April 27th.

John. a. Monroe, Clerk,

by W. F. Chevers, Deputy.

It is hereby stipulated and agreed between
the U.S. Dist Atty on the part of the United
States, and the Atty for the appellant in the
case of Enrique Huber appellant vs the United
States appellee, that the foregoing copy of ~~the~~

~~do~~ under of the deposition of John Biddlewell
as relates to the general map of Sacramento
valley (with a copy of the map referred to therein) be
filed in case No 51, with the same effect
and subject to the same exceptions as if the
same had been taken in that cause.

Wm Blanding
Dist Atty.
Hullish Peckay & Billings
Atty for Appellant.

51c

U. S. District Court.

The United States.

— vs —

Enrique Suber.

Copy of deposition
of

John Bidwell, and
Stipulation.

Filed May 27, 1857.

W. H. Chivers,
Deputy.

UNITED STATES DISTRICT COURT,
Northern District of California.

Emigene Huber.

^{vs}
The United States.

San Francisco, June 27, 1857.

ON this day, before W. H. Chevers,
Deputy Clerk District Court
Commissioner of the United States for the Northern District of California, duly
authorized to administer oaths, &c., &c., came _____

Peter J. Scherrbeck a witness produced on behalf of the
Claimant

in Case No. 57, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 159 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows — ~~his evidence being interpreted by~~
a sworn interpreter

PRESENT: A. W. Hallick, for Claimants,
& the U. S. Dist. Atty —

QUESTION BY Clt: Counsel.

What is your name, age, and place of residence.

Answer.
Peter J. Scherrbeck, 47 years, of age,
reside in San Francisco, Cal., and
have resided in California since
1840.

Question 2.

Were you with Micheltorena on his expedition against Castro, and others in 1845.

Answer,
I was.

Question.

What time did you leave the Salinas

SCHERRBECK

Plains near Monterey.

Answer.

About the 10th or 11th of January
1845.

Question 3.

What time did you pass
the St Inez mountain.

Answer.

about the last of January
or 1st of February, 1845.

Question 4.

About what date did you
pass the Arroyo Honda between
Point Concepcion and Santa
Barbara.

Answer.

About the 6th or 7th of Feby, 1845.

Question 5

At what date did you reach
Santa Barbara.

Answer.

The 9th or 10th Feby, 1845.

Question 6.

How long did you remain
at Santa Barbara, or
what date did you leave there.

Answer.

We left there about the 14th Feby, 1845.

Answer.
We left there about the 14th Feby. 1845.

CASE 51 ND
PAGE 134

Question 7.

At what date did you reach the
Rincon between Santa Barbara, and
San Buenaventura.

Answer.

On the 16th same month & year.

8th

Were you with Micheltorena, and
his Army at all the dates above
specified.

Answer.

Yes

9th

Did you go on from there with
him, to Las Angeles, or not.

Answer.

I did not. On the 18th I left
him at the Rincon, and returned
to Santa Barbara.

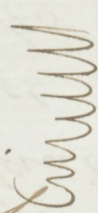
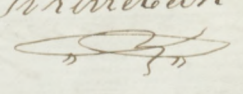
10th

How long did you remain at Santa
Barbara on your return, and
when did you reach San Francisco.

Answer.

I remained at Santa Barbara two
days, and reached San Francisco
on 28th Feby. 1845. in company
with others.

Cross examination waived.

sworn to & subscribed  Pedro J. Schurebaki
 June 27, 1857, before me. 
 W. H. Cheverus,
 Deputy Clerk

N^o 51

W. S. Ditt: Court.

The United States,

vs

Enrique Huber.

Deposition of
Peter J. Schrebeck,

Toid June 27, 1857.

W. H. Chivers,
Deputy.

CASE 51 ND

PAGE 136

137 To 143 Inclusive.

Cap. Ballou
\$10.00

Combing Celebrado en el Campo de S. Fer-
nando entre el S. Gral de Brigada y Com.
gral de este Departam. D. Stan. Michelena
na y el Ten. Cor. de Ejercito D. Jose Castro
Comand. de las fuerzas pronunciadas en el
mismo

CASE 51 ND
PAGE 137

- 1^o Fue como hta la pta no halla
venido del gob. Supremo la reso-
lucion pedida p. el S. Gral D.
Stan. Michelena con su ma-
yor q. D. Rafael Feller p. a retirar
se con su expedicion al interior
p. ser el pronunciam. del Pais
contra esta y no pudiendo S. E.
ya contener con su pequena fu-
erza y demas escasos recursos
la Compagnia q. en todo el
Pais se compromete a emprender
su marcha con la tropa q. lo
acompana al puerto de S. Pe-
dro, donde el S. Castro le alista
un Brigue mixto de vivas
q. lo conduca a Monterrey
- 2^o Fue en el mismo puerto de S. Pe-
dro deparan las armas quitan-
do como ciudadanos los soldados
q. voluntariam. quieren quedar
en el pais; Comprometendose
entonces la actual autoridad
a hacerlos respetar y dis-

pensarley proteccion

30^o Fu los Soldados q^o quiesan seguir al S. Gral se embarcarán con sus armas á Monterrey en donde unidos con los de aquella guarnicion marcharán en el mismo Buque u otros mas sino cupieren p. el puerto del interior de la Rep^{ca} q. les Comunga, llevando sus armas.

4^o Fu los S. Oficiales q. quiesen quedarse en el país, serán considerados como tales Oficiales del Exército Mexicano garantizandoles sus vidas e intereses y abonando les sus haberes del Erario publico

5^o Fu los mismos Consideraciones se dispensaran á todos los S. Oficiales q. en las presentes circunstancias han prestado sus servicios al S. Gral. etc. etc.

6^o Fu todo el armamento municiones y pertrechos de guerra q. existen en el deposito de armas en Monterrey se entregaran al S. Com. de las fuerzas pronunciadas p. q. con ellas se defiendan la integridad del Departamento y independ. Nacional

g.º el gñal le encomienda,

7º Fue desde esta fha el mando pro-
pitico del Departam^{to} queda entrega-
do al primer vocal de la misma
Asamblea Departam^l p.^º habiendo
asi dispuesto dicha Corporacion
conforma a la ley a cuyo efecto
S. E. el S. Gñal. Michelo^a entregara
una orden circular en ma-
ny del jefe de la division de ley
pronunciado p.^º g.^º inmediatam^{te}
sea publicada p.^º tray ley pue-
blo del Departam^{to}.

8º Fue igualm^{te} mandara otra or-
den p.^º g.^º sea reconocido como co-
mand^{te} g.^º de este Departam^{to} el
S. Fen. Cor.^l de Ejercito D. Jose
Castro

Y habiendo sido ley Comisionado en
el mismo campo p.^º parte del
S. Gñal Michelo^a y S. Com.^{te}
de Bat.ⁿ D. Felix Baldez y Fen.^{te}
Coronel D. Jose m.^a Castañarez; y
p.^º parte del S. Fen. Cor.^l D.
Jose Castro y S. mayor gñal D.
Alse An^o Carrillo y Fen.^{te} gñ
Atan.^o Castro se remitenon
p.^º la aprobacion o reprobacion
de amboy Señay como

by primary copy of the Debrauwy

Campo de S. Fernando Feb 22 or 1845

José Valdez

José Ant.º Castro

D. María
Castro

Man.º Castro

Aprobado
Michelt

Aprobado
Castro

Atiendo a lo que

La División del Cor. Gral. Michelt.º marcha
rá con todos los honores de la guerra, a toque
de cornetas y tambores, bandera desplegada
dos pías de asus y una culebrina de a cuatro
con mucha ardiendo, siendo saludada la
bandera con la vanda de tambores del
Campo de San Jerónimo Coronel D. José
Castro entregando en S. Pedro al Oficial
que se comience las tres pías men-
cionadas y sus correspondientes pertrechos.

Michelt

Castro

Gob^o Sup^o del Dep^{to}
de California

Para poder contestar la nota de V. S.
que recibí haller por conducto del Sr. Sepul-
veda es indispensable tener a la vista la
Constitucion, y como esta no se halla
en mi campam^{to} militar me reservo
hacerlo lo mas pronto posible

Arroyo Queo: Febrero 4. de 1845

Manuel Michels

Por per Vocab de la Coma
Asamblea Departamentale

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

I, JOHN C. HAYS, Surveyor General of the United States for the State of California, and as such, having in my office and in my charge and custody a portion of the Archives of the former Spanish and Mexican Territory or Department of Upper California, by virtue of the power vested in me by law, Do hereby Certify, that the five preceding, and hereunto annexed pages of tracing paper numbered from one to five — inclusive, exhibit a true and accurate ^{Copies} copy of 1st; pages numbered from one to four inclusive exhibit an accurate copy of an agreement between Man^o. Micheltuna and José Castro dated S. Fernando July 22^o 1845, and page numbered five exhibits an accurate copy of a letter signed "Man^o. Micheltuna" dated Arroyo Concho July 4^o 1845, as the same are on file in said Archives

In Testimony Whereof, I have hereunto signed my name officially and caused my Seal of Office to be affixed, at the City of San Francisco, this 1st day of July — 1857



John C. Hays

U. S. Surveyor General for California.

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

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

No 51

In U.S. Dist Court
North Dist of Cal.

Enrique Weber
appellant

vs
The U.S. States
appellee

Letter of Micheltonena
& Treaty of San Fernando

Filed July 24, 1857,
W. H. Chever, Jr.,
Deputy.

CASE 51 ND
PAGE 143

UNITED STATES DISTRICT COURT,
Northern District of California.

Enrique Hubert

vs
The United States

San Francisco,

July 24 1857

ON this day, before ^{Haquibaynes.}
^{refere appointed by the Dist Court} a
Special Commissioner of the United States for the Northern District of California, duly
authorized to administer oaths, &c., &c., came *Josue O'Farrell*
a witness produced on behalf of the

Claimant

in Case No. 57, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 159 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows — ~~his evidence being interpreted by~~

~~a sworn interpreter~~

PRESENT: U.S. Dist Atty P. Della Torre and H
W. Halleck for Claimant

QUESTION BY H. W. Halleck

My name is Josue O'Farrell, 40 years old and
I reside in Sonoma Co. and have resided in
California for the last 14 years since 1843

2 Ques. Did you accompany Gen. Micheltorena
in 1844 & 1845 in his Campaign in the South
against Alvarado & Castro and if so, in what
Capacity?

2 Ans. I did. I was quartermaster

3 Ques. Do you remember the date of the arrival of
Gen. Micheltorena at Santa Barbara, how long
did he remain there?

3 Ans. I do not recollect the date of his arrival
nor can I say with certainty how long he remained
there, but I think he was there for 3 or 24 days

4 Quet- Do you remember long long after he left San Barbara before the treaty or Convention at "Covenga" or Camp of San Fernando was entered into between Micheltorena and ^{Castro} ~~Alvarado~~?

4 Ans- We left Santa Barbara, I don't know what day or date. We travelled to a place called the "Rincon" and camped on the sea beach at said "Rincon" and remained there ^{from} five to seven days when we marched on to the Mission of San Buenaventura by the Beach road which was then occupied by Castro forces, we assailed them and remained at that Mission one night, the next day we marched to the Mission of San Fernando and encamped there one night, the next morning we marched to "Covenga" and that evening or the next morning the treaty was made, making in all 7, 8 or 9 days from Santa Barbara to "Covenga" to the time the treaty was made.

The Dist Atty waives an examination

Wm. H. Smith

Sworn to & subscribed
before me July 24th 1854

J. G. [Signature]

Special Commissioner

No. 51

U. S. Dist Court

Eugene Huber
vs

The United States

The deposition of
Jasper O'Farrell

Filed July 24, 1857.
W. H. Chevers,
Deputy.

CASE 51 ND

PAGE 146

Government of the Department }
of the Californias }

In order to be able to answer
the note of your excellency which I
received yesterday by Señor Sepúlveda,
it is indispensable to examine the Constitution
and as it is not to be found in my military
encampment, I shall reserve my answer
for the earliest possible opportunity.

God & Liberty

Arroyo Grande February 4th 1845

Manuel Michelborn

Señor 1st Marshal of the }
Most Excellent Departmental Assembly }

Convention entered into in the Camp of San Fernando between Brigadier and Commandant General of this department, Don Manuel Micheltorena and Lieut. Col. of the army, Don Jose Castro, Commandant of the forces pronounced in the same:

1st That whereas at this date there has not arrived from the Supreme Government the resolution asked for by the General, Don Manuel Micheltorena by his Major son Rafael Telles to withdraw himself with his expedition to the interior on account of the pronouncement of the country against it, and ^{his Excellency} not being able now to ~~pull out~~ ^{extricate} with his small force on the scarcity of means, the conflagration which extends through the whole country, he promises to begin his march with the troops which accompany him to the port of San Pedro where ~~Senior~~ Castro will have ready a vessel supplied with provisions to conduct them to Monterey.

2^d That in the same port of San Pedro the soldiers, who voluntarily desire to remain in the country, will give up their arms remaining as citizens; the present authorities promising to cause them to be respected and protected.

3^d That the soldiers who desire to follow the General will embark with their arms at Monterey where united with those of that garrison they will proceed in the same vessel or another more suitable for the port of the interior of the Republic which

- may suit them, carrying their arms.
- 4th That the officers who desire to remain in the country shall be considered as such officers of the Mexican Army, guaranteeing them their lives and property & paying them their dues from the public treasury.
- 5th That the same considerations shall be extended to all those citizens who in the present circumstances have presented their services to General Micheltorena.
- 6th That all the arms munitions and instruments of war which are in deposit at Monterey shall be delivered to the commandant of the pronounced forces in order that with them they may defend the integrity of the department and the general National independence.
- 7th That from this date the political command of the department is delivered to the first Vocal of the Most Excellent Departmental Assembly, the said corporation having so directed conformably to the laws, to which effect His Excellency General Micheltorena will deliver a circular order into the hands of the chief of the division of the proemendados to be immediately published to all the people of the department.
- 8th That he will also issue another order that Lieut Col of the Army, Don Jose Castro be recognized as the Commandant of this department.

And having been ^{agreed upon by the} comm^{rs} in the same
Camp, on the part of Genl Micheltorena,
commandant of Battalion, Don Felix Baldez
and Lieut Col Don Jose Maria Costanares,
and on the part of Lieut Col Don Jose Castro,
Major Genl Don Jose Antonio Carrillo, and
Lieut Don Manuel Castro, they will be
remitted for approval or disapproval to
the two Senores as first chiefs of the
respective forces.

Camp of San Fernando, February 22. 1845.

Felix Baldez
Jose Ma. Costanares

Jose Antonio Carrillo
Manuel Castro.

Approved
Micheltorena

Approved
Castro.

Additional Article

The division of General Micheltorena will
march with all the honors of war, pipes &
drums, banner displayed, two six pounders and
a four pounder culbrina, with match burning,
being saluted by the beating of the drums
of the camp of Senor ~~Castro~~ Lieut Col Don
Jose Castro, ~~they being~~ ~~deliberately~~ in San
Pedro to the designated the three pieces
mentioned & their corresponding munitions.

Micheltorena

Castro

No 51
U. S. Dist Court
North West of Colo.

Enrique Huer
Appellant
vs
The United States
Appellee

Translation of
Letter of Michelmorena dated
Febry 4th 1845, and Treaty of
San Fernando. Febry 22^d 1845

Filed July 24, 1857.
W. D. Cheney,
Deputy

CASE 51 ND
PAGE 151

Walter Beachy & Billings
Atty for Appellant

U. S. District Court.

The United States

vs
Enrique Huber

3700 57.

San Francisco, May 1. 1862

Gentlemen,

You are hereby notified that on Tuesday next, the 6th day of May instant, at 11 O'clock, A.M., or as soon thereafter as counsel can be heard, I will examine R. C. Hopkins in the above entitled cause on behalf of the United States.

Yrs &c.

Wm H. Shafer
U. S. District Atty

Wm Hallett, Leachy & Billings
Attorneys for Claimants

U. S. District Court

The United States

vs

Enrique Herber.

CASE 51 ND
PAGE 153

Notice of
Examination

Due service of the within
admitted this 12th day of
May, 1862.

Wm. Peckham
Attor for Claimant

Wm. Sharp
U.S. Atty.

U. S. District of California

[Faint, illegible handwritten notes in the right margin, possibly bleed-through from the reverse side of the page.]

Northern District of California. }

CASE 51 ND

PAGE 154

The United States }
VS. }

Enrique Huber.

San Francisco, *May 6th* 1862

On this day, before ~~me, WILLIAM H. CHEVERS, a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c, &c,~~ *the District Court of*
came *R. L. Hopkins's*

a witness produced on behalf of the *United States*,
in Case No. *51*, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. *159*, on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows—
~~his evidence being interpreted by a sworn interpreter, to wit: By~~

PRESENT :

W^o Della Torre for U. S.
W^o Northrup for Claimants.

QUESTION 1st, By Counsel for the

*I am keeper of the Archives
I am familiar with the signatures
and public of Gov. Michel Comua
and Pablo de la Guerra have
never seen either of them quite
but have examined a great
number of their signatures, as
they appear on the Archives of*

2 undoubted authenticity and
as to which there could be no
grounds for suspicion

Grant in this case shown to
witness

I do not think the name
of Pablo de la Guerra on the
first page is genuine.
I do not think that of
Micheltorrea is genuine

The signature of Micheltorrea
to the body of the grant ap-
pears to me to be in the
same hand writing as the
grant itself or that of Juan
de Castañeda who signs it
as Secretary ad interim I
know Castañeda hand writing
in the same way as Micheltorrea
and de la Guerra —

I have given considerable
attention to the observation &
comparison of hand writings
of documents in archives for the
7 years. Have examined
Spanish N.S. almost daily
during that time

The above testimony was taken
on subject to ~~examine~~ objection
on part of the claimant -

The Counsel for claimant not
being prepared to Cross examine
the witness at this time
the deposition was signed
but with leave to the claimant
to recall the witness
for Cross examination if
so advised

~~Take~~ R. C. Hopkins,
Sworn to & subscribed
in open Court this 8 day
of 1862
Ogden Hoffman
Dist. Judge

No. 51.

U. S. District Court.

The United States.

vs.

Emigre Haber.

Deposition of
R. C. Hopkins
for U. S.

Filed May 6, 1862.

W. H. Chever,
Clerk.

CASE 51 ND

PAGE 157

United States District Court
Northern District of California

Enrique Huber }
Appellant } No 57.
vs }
The United States }
Appellee }

It is hereby stipulated that the
appeal from the decree of the U.S. Land
Commissioners in this cause be and
the same is hereby dismissed.

San Francisco } Halleck Deacy & Bellings
July 30 1863. } Atty for the Appellant

Wm H. Sharp
U. S. Atty.

United States District
Court Northern

No. 51.

District of California

Enriquez Heber
Appellant

vs

United States
Appellee

Stipulation
terminating appeal

Filed Aug: 5, 1863.
H. H. Chevers,
Clerk

CASE 51 ND
PAGE 160

At a Stated Term of the DISTRICT COURT OF THE UNITED STATES OF AMERICA, for the Northern District of California, held at the Court Room in the CITY OF SAN FRANCISCO, on *Wednesday* the *fifth* day of *August* in the year of our Lord one thousand eight hundred and sixty-~~three~~

Present:

cm The Honorable OGDEN HOFFMAN, District Judge.

The United States

v.

Enrique Huber

N.º 57

This cause came on to be heard on the appeal of the claimant from the final decision of the Board of Commissioners to ascertain and settle the private land claims in the State of California under the Act of Congress approved March 3, 1851, upon the transcript of the proceedings and decision of said Board duly filed according to law, and upon the further evidence duly taken in this Court, and was regularly submitted to the Court; and the said claimant Enrique Huber, by his attorneys Halleck, Beachy and Pillsbury, having this day filed a stipulation dismissing the appeal of the said claimant from the decree of said Board, It is therefore Ordered, adjudged and decreed that there is no error in the decree of the said Board, and that the said decree be and the same is hereby affirmed. And it is further Ordered, adjudged and decreed that the claim of the said Enrique

Huber is invalid, that his said claim
be and hereby is rejected, and that the
petition of said Huber for a confirmation
be and the same hereby is dismissed.

John Hoffman
dist Judge

No 51

UNITED STATES DISTRICT COURT

Northern District of California.

The United States

v.

Enrique Huber

Final Decree
rejecting claim.

Filed Aug: 5, 1863

A. A. Cheever,

Clerk.

CASE 51 ND
PAGE 161

H. S.
E. Haba }
}

Della Love —

1

There is no expediente — nor
any trace of its existence in
the archives

2 Doubtful whether Micheltonena
had power to make grants
at this date Feb. 26. 1845 —

3 It is a forgery in most
if not all parts

H. C. Hopkins proves P. de la
Guerra's & Micheltonena's
writing — & Micheltonena's
signature forged — all
a handwriting of Castañeda

Cause submitted on part of
H. S. with leave to claimants
to take proofs & file briefs —
within 2 months.

51
—

The Mind States

Ch.

Enrique Huber
—

How Argument

No 37.

Claim of Henry (Enrique) Huber to the Rancho called "Honest," 884 leagues in Butte County.

The Transcript (No 159) in this case contains:

- II Petition to the Board of Commissioners _____ p p 5 & 6
- III Deposition of John A Sutter _____ p 7.
proves his signature and seal to order of Juridical profession & that it was executed at the time it bears date.
- III Deposition of Juan de Castaneda _____ p 8.
claimant presented the original petition and map to Gov. Micheltorena during the Campaign; the grant was signed in Santa Barbara at the time it bears date; witness saw Micheltorena sign it & signed himself as secy ad interim. Jimeno, the regular secy was absent.
- IV Deposition of J. Cordua. _____ p p 9 & 10.
Knows the land claimed; in Sept. or Oct. 1845; witness leased this Rancho of Huber for six years; was to build a house & corral which were to become the property of Huber at the expiration of the lease; hired Benedict Reelle to build them; built in 1846 but don't remember exact date; witness stocked the Rancho with cattle in 1845; had cattle on it in 1845-6-7-8 & 9; in 1849 they numbered between 4 & 5 thousand; sold a part in 1849 & the remainder in January 1850; house & corral still standing Castorae. Both copies of lease burnt in 1850.
- V. Original title papers _____ p p 12 to 14
- VI Translations _____ p p 15 & 16

These papers consist of the original petition

map, and grant. The petition is dated Oct 7th 1844, and the grant Feb 11th 1845.

The genuineness of these papers is proved by the seals who signed the grant. The reason why the petition & map is found in the hands of the claimant is the fact testified to by the seals that the grant was issued in the campaign, and by the historical fact that the Governor never returned to the seat of the Government, Monterey, but was a few days after defeated in battle, taken prisoner, and sent out of the country.

VIII Proceedings of Juridical Profession — pp 17 & 18.

VIII Translations — pp 19 & 20.

On the 14th of May 1845 the claimant, Huber, submitted his title to the local Magistrate, Capt Sutter, asking for juridical profession; on the same day Capt Sutter, the local Magistrate, endorsed his order on this petition, referring to the grant, describing the boundaries, and directing that the claimant be put into the possession of this land the next day.

Capt Sutter proves the genuineness of this document & that it was executed at the time it bears date.

IX Opinion of Judge Campbell & dissenting opinion of Judge Thompson — pp 21 to 71

X Decree, rejecting claim, — p 72.

Proceedings in U.S. Dist Court.

1st Transcript filed — July 26th 1854

2^d Notice of intention to prosecute appeal — Nov 24th 1854

Petition of Claimant for Review, filed, Nov 24th 1854
Answer of U.S. " July 16th 1855
Deposition of Adolph Bruckheim proved
that Huber occupied this land in 1845
and leased it to Cordua.

6th Deposition of Ernest Reufus. Witness knows
the land claimed by Huber in this case.
was on it in 1845 for twice, for 8 or 10
days. Huber was living on it, breaking
in his horses. Saw his manada
on the Feather River between 4 & 8 miles
above the Wha; - saw from 10 to 20
horses, perhaps more.

7th Deposition of Nicholas Alger. Witness
lived at Corduas in 1845 & 1846. Huber was
there every two or three weeks. In March
or April 1845 Huber took 20 or 30 horses
from my ranch to his place on the Feather
river, and afterwards other horses from
other neighbors. Huber claimed to be
the owner of this land in 1845 - that
is the land on Feather river above
Sutter's line, and between the Hills
and the Rancherias.

8th Deposition of Sutter. Huber applied for
this land in 1843, but his petition was
lost or not acted on. He again asked for
it in 1844 or 1845; his petition was sent to
Micheltoreno while on his campaign, and
in February 1845, while in Santa Barbara,
he made the grant. Witness gave Huber
an order to take possession of this land

in May 1845. Don't remember whether it was a written or verbal order. Huber did not live at Sutter's Fort in 1845, but lived on his land. In that year witness sent an order to Huber on his rancho for horses. Major Bidwell was the clerk who wrote the order.

9th deposition of Bidwell proving map made by him of lands in Sacramento Valley. This map has Huber's Rancho marked on it.

Witness on part of N.S.

1st deposition of Charles Ruelle. Ruelle lived south of the Honcut in 1845 - In 1844 he built another house north of the Honcut. Huber had ~~a few~~^{some} horses on this land, they roamed over the country and were corralled at Mary's mill. Witness settled on a part of this land claimed by Huber in 1847. He sold out his claim to a company. Huber never told witness positively that he had a title, but heard it from others. Heard a conversation between Cordua & Huber in 1845 in which the former wished to buy land of Huber, but Huber declined selling at the price; thinks it was this land now claimed by Huber. Witness was not on the land between 1845 & 1847. Between 1847 & 1849 the land north of the Honcut

Huber

was not occupied except by witness.

- 2^d col Hays produces original grant attached to deposition of Casteneda.
- 3^d John Bidwell. Is acquainted with signature of Micheltoena; examines signature to grant; cannot say positively it is the genuine signature of Micheltoena; it differs somewhat from his signature as I have seen him write it; from my knowledge of his hand-writing I should not to me think to be written by himself. The rubric looks like a pretty fair imitation. I am not much of a judge. Micheltoena always wrote with a heavier hand than this. He wrote with a quill pen; in fact he could not write with any other with advantage - The letters of this signature have a strong resemblance to the usual signature of Micheltoena except the angles of the letters which are here sharper than those which I have seen him make.

On the 11th of February 1845 Micheltoena was not, I think in Santa Barbara, but below. Micheltoena left Santa Barbara I think the first week in February 1845 or in the early part of that month. He arrived in Los Angeles the 23^d of February. On the 11th I think he was about mid-way between Santa Barbara & Los Angeles. He staid 3 or 4 days in Santa Barbara. Don't know whether or not he transacted civil business in camp. Jimeno the regular Sedy

was not with him. I do not know that he had any secretary with him. Don Louis Mariel I think did most of his writing. Casteneda was with him.

Huber resided at Sacramento in 1845. He did not reside on the land in question, to my knowledge. I think I should have known it if he had. I knew Ruelle from 1844 to his death in 1850. In 1847 he built a house on Feather river 2 or 3 miles below the mouth of the Honcut. In 1849 he built a house on Feather river 3 or 4 miles above the Honcut. I understood that he made some arrangement with Cordua about the land. I think Huber had no stock except perhaps a few head of horses. If he had had much I think I should have known it. I was not particularly intimate with Cordua's business at that time. I knew of no dispute between Capt Sutter & Huber ^{about boundaries} - I did not understand that they joined - The Cordua grant intervened between them. Cordua's land joined Sutter's on the parallel of $39^{\circ} 33' 45''$ & formed an L around to the Yukon. I never knew that Cordua had possession of any of Huber's land.

4th M. C. Nye - witness had charge of Cordua's stock in 1843 & 1844; it was kept between the Feather Yukon & Honcut rivers. In 1843 Cordua built where Marysville now is. He had a house

built by Ruelle in 1847 south of the Hornet
& east of Feather River. Ruelle at that
time, he did not, to my knowledge have
charge of stock belonging to Cordua or Huber.
If he had had, I should have been likely to
know it. Huber had some horses, 3, 4 or 5 in
that country; they were kept on Cordua's
ranch.

5th C. Couillard. Witness is interested in the
Cordua grant which is embraced in Huber's
claim. entered service of Cordua January 1847
& remained with him till 1848. - never heard
that Cordua had land from Huber. Ruelle
built a house for Cordua in summer of 1847
east of Feather river & south of the Hornet.
In 1847 he built another north of the Hornet.
He never took care of any stock for Cordua
or Huber. First saw Huber in 1848. Never
saw Huber at Cordua's house till 1848. Came
to California in 1846. Never saw Cordua's title
papers - in September or October 1848 purchased
Cordua's interest in one half of all his stocks
land, & the lease from Suther & everything that
belonged to him. The other half sold to M.C.
Nye & W.F. & purchased by them by witness
in the fall of 1849. Never saw any cattle or stocks
with Huber's brand about that neighborhood.

Additional testimony by claimant

1st Peter Sheeha, - was with Michelorena in his
campaign in 1845. Left the Plains of Monterey

river of July 1st. - Passed the Hornos Pass of the Santa Ynez mountains the last day of July - first day of Feby; passed the "Arroyo Nudo" the 4th or 5 of Feby; arrived at Santa Barbara the 9th; left Santa Barbara Feby 14th and marched to the Rincon.

2^d

Jospeh O'Farrel. was quartermaster in Micheltonena's expedition; don't remember the dates of his arrival and departure from Santa Barbara; remained in Santa Barbara 3 or 4 or 5 days; then part of a day to the Rincon, remained there about 5 or 6 days, probably 7 days; one day thence to San Buenaventura; one day thence to San Fernando; next morning to near Cuenca where the treaty was signed that night or next morning; making in all 8 or 9 days from Santa Barbara to the date of the Treaty.

3^d

Micheltonena's letter, dated "Arroyo Nudo" Feby 4th 1845.

4th

Treaty of Camp of San Fernando, dated Feby 22^d 1845.

No 51

U. S. Dist Court.
Northern Dist

Enrique Huber appellant
vs
The United States appellee

Claimants Chief of case

This is made an
agreed statement
by Dist Atty's - See
Hopkins testimony of
6th May 1862 - Grant
not genuine -

CASE 51 ND

PAGE 172

Halliburton Peckham & Williams
Atty for claimant

CASE 51 ND
PAGE 173

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

San Francisco, July 26 1854

Mrs. A. Monroe Esq.
Clerk of the U. S. District Court for the
District of California.

Sir;

I herewith transmit you, pursuant
to the requirements of the Act of Congress, approved August 31st,
1852, a Transcript of the Record of the Proceedings and of the
Decision of this Board, of the Documentary Evidence and of
the Testimony of the witnesses upon which the same is founded,
in Case No. 159 on the Docket of the said Board, wherein
Ernque Huber is

the Claimant against the United States, for the place known
by the name of "*Houcut*."

and request your receipt for the same.

I am, Respectfully,

Your Obedt Servant,

G. W. Fisher.
G. W. Fisher