

CASE No.

394

NORTHERN DISTRICT

PUNTA de LOBOS GRANT

JOSEPH C PALMER et al.

CLAIMANT

MICROFILM

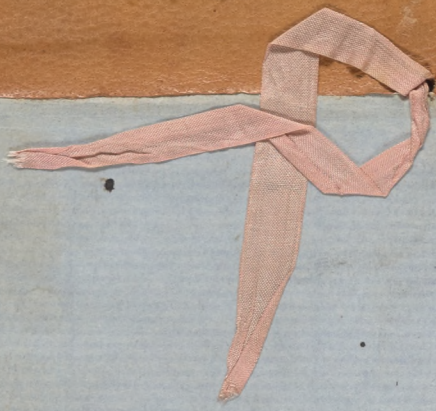
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LAND CASE 394 ND PAGES ~~192~~ 203 JB 11/2/63

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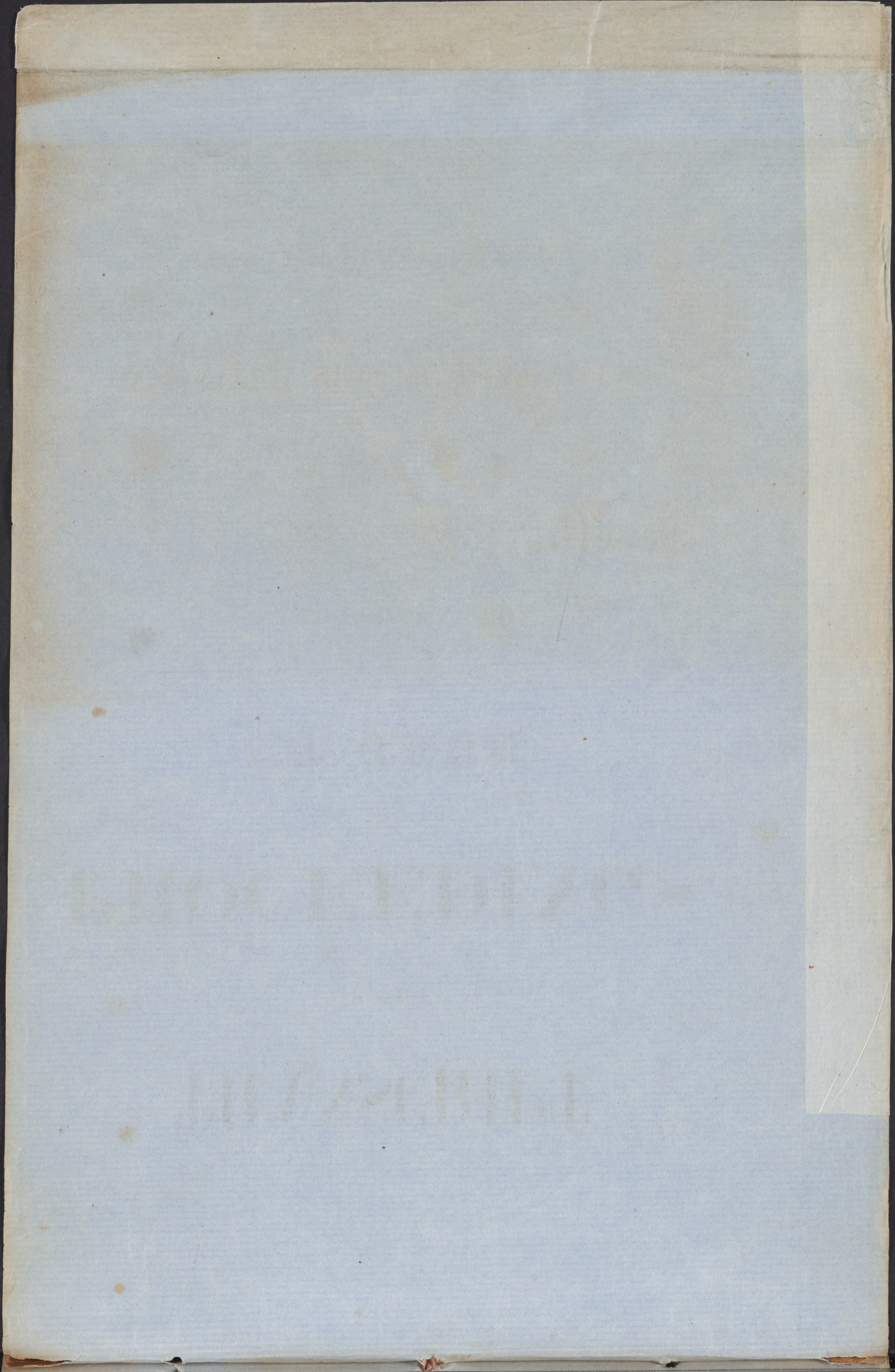
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TRANSCRIPT
OF THE
PROCEEDINGS

IN CASE

NO. 575

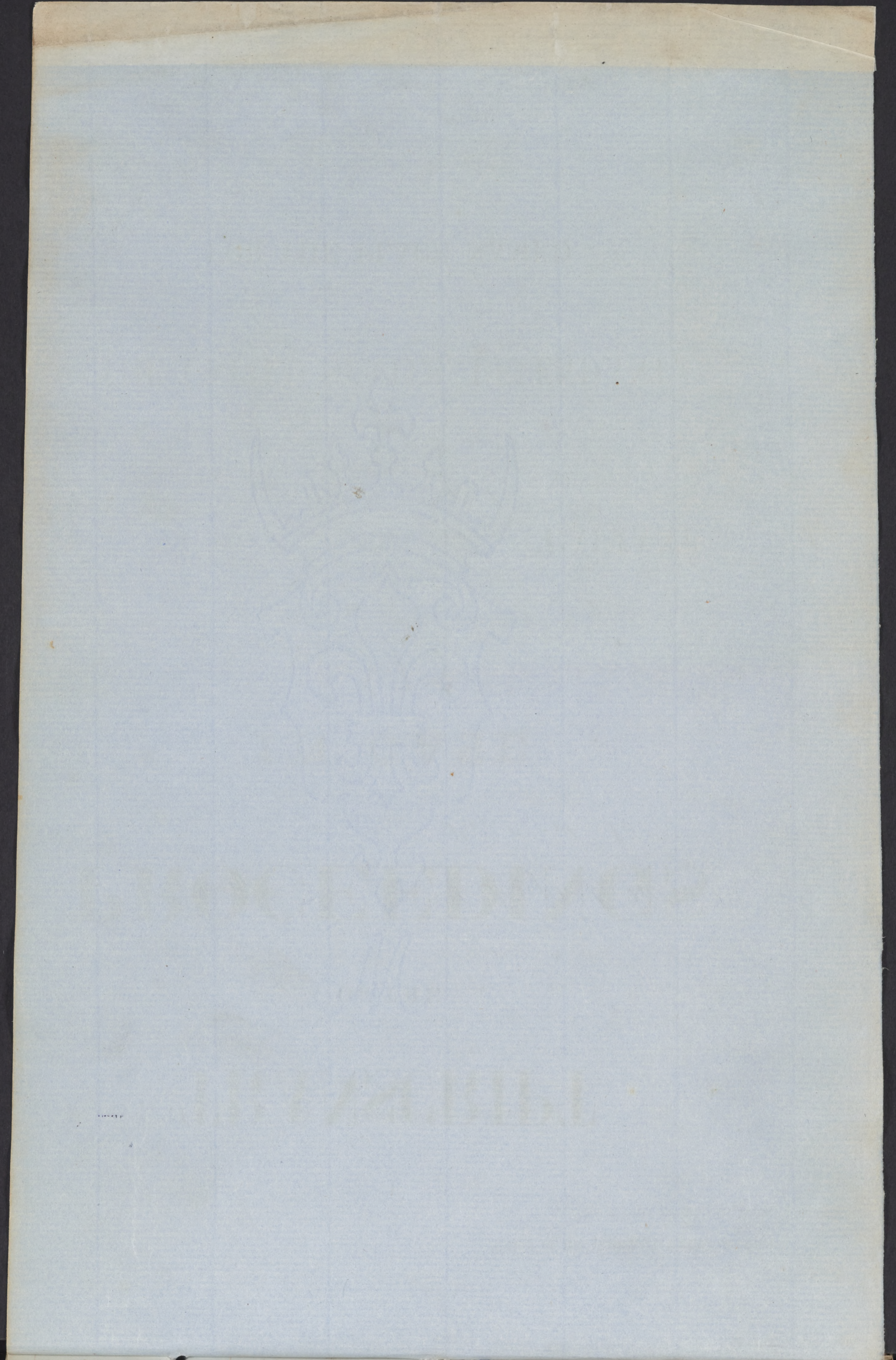
Joseph C. Palmer, et al. CLAIMANT S.

VS.

THE UNITED STATES, DEFENDANT,

FOR THE PLACE NAMED

"Punta de Sobos"



Office of the Board of Commissioners,

To ascertain and settle the Private Land Claims

IN THE STATE OF CALIFORNIA.

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Be it Remembered, that on this *Seventeenth day of January*, Anno Domini One Thousand Eight Hundred and Fifty-*three*, before the Commissioners to ascertain and settle the Private Land Claims in the State of California; sitting as a Board in the City of San Francisco, in the State aforesaid, in the United States of America, the following Proceedings were had, to wit;

The Petition of *Joseph C. Palmer, et al;*
~~~~~ for the Place named  
~~~~~ "*Punta de Lobos*,"  
was presented, and ordered to be filed and docketed with No. *515* and is as follows, to wit;

(Vide page *5* of this Transcript.)

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

San Francisco April 2 1853.

In Case no. *515*, *Joseph C. Palmer, et al;* for the place named "*Punta de Lobos*," the deposition of *Beruti Diaz*, a witness in behalf of the claimants taken before Commissioner *Henry J. Thornton*, with documents marked *H. J. T. no. 1, 2*, annexed thereto, was filed;

(Vide page *7* of this Transcript.)

In the same case the counsel for the claimants filed the following Release, to wit;

(Vide page *38* of this Transcript.)

San Francisco July 21 1854,

In the same case the deposition of *Pio Pio*, a witness in behalf of the claimants, taken before Commissioner *G. J. Barrill*, was filed;

(Vide page *11* of this Transcript.)

San Francisco Aug. 8' 1854,

In the same case the deposition of Benito Diaz, a witness in behalf of the claimants, taken before Commissioner Peter Sott, was filed;

(Vide page 5 of this Transcript)

San Francisco December 5' 1854,

Case no. 515 was ordered to be placed at the foot of the 3^d class cases on the trial docket,

San Francisco December 8' 1854,

In the same case the deposition of Jose Matias Moreno, a witness in behalf of the claimants, taken before Commissioner Peter Sott, was filed;

(Vide page 7 of this Transcript)

San Francisco February 19' 1855

In the same case the deposition of John W. Watson a witness in behalf of the United States, taken before Commissioner Peter Sott, was filed;

(Vide page 27 of this Transcript)

San Francisco March 9' 1855.

In the same case the deposition of John S. Viogot, a witness in behalf of the United States, taken before Commissioner Peter Sott, was filed;

(Vide page 18 of this Transcript)

San Francisco, March 13' 1855.

In the same case the deposition of Jonathan D. Stevenson, a witness in behalf of the United States, taken before Commissioner Peter Sott, with documents marked A. P. L. & B. P. L., annexed thereto, was filed;

(Vide page 19 of this Transcript)

Case no 515 was submitted without argument and taken under advisement by the Board.

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San Francisco March 20th 1855.

In the same case the deposition of James Alexander Forbes, a witness in behalf of the United States, taken before Commissioner Peter Sott, was filed in accordance with the stipulation annexed thereto, was filed;

(vide page 22 of this Transcript)

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San Francisco March 24th 1855.

In the same case the deposition of James C. Crane, a witness in behalf of the United States, taken before Commissioner Peter Sott, was filed in accordance with the stipulation annexed thereto;

(vide page 24 of this Transcript)

San Francisco May 17th 1855.

In the same case the deposition of Vicente P. Gomez, a witness in behalf of the United States, taken before Commissioner S. B. Farnell, was filed;

(vide page 49 of this Transcript)

in accordance with the following stipulation, to wit;

(vide page 47 of this Transcript)

San Francisco Aug. 14th 1855.

In the same case Commissioner S. B. Farnell delivered the opinion of the Board rejecting the claim;

(vide page 59 of this Transcript)

and the following order was made, to wit;

(vide page 61 of this Transcript)

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Feltton ...

5. Petition Before the Commission to settle Private Land Claims in California.

Joseph L. Palmer, Charles W. Cook, Bettnel Phelps, and Dexter R. Wright give notice that they claim a tract of Land in said State, by virtue of a right and title derived from the Mexican Government.

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The tract so claimed is of about two Leagues in extent situated in the County of San Francisco and known as the Rancho "Punta de Lobos" on Wolf's Point bounded Northernly by the Sea which flows to the point of San Francisco, Southernly by the Hill known as the Hill of the Laguna Honda, in the rear of the Mission of San Francisco on Dolores, Easternly by the high Hills, and Westernly with the "Punta de Lobos" on Wolf's Point from which said tract takes its name.

On the 3^d of April 1845, Benito Diaz a citizen of the Mexican Republic petitioned for said Land to be granted to him presenting his petition according to law to the then Governor of California. Don Pio Pico, which said Petitioner said Governor referred to the nearest public functionary, to wit, the Justice of the Peace of the Settlement of San Francisco on Yerba Buena and the Commandant of the Presidio of San Francisco to report upon the same.

In pursuance of said reference said Officers made their respective reports declaring the said Lands to be vacant and in condition to be granted with the exception of two small points, the one occupied by the ruins of the old fortification and the other by the ruins of said San Francisco, and on the twenty fifth day of June 1846, said Governor granted said Lands accordingly to Benito Diaz -

On the 19th of September 1846, said grantee sold and conveyed the same - by

Thomas O. Lanier, who afterwards on the 19th Sep-
tember 1849, sold and conveyed the same to said
Dexter, R Wright, and it has come to present Claimant
through sundry medm conveyances which will be
Exhibited and proved according to Law.

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And
said Claimants further show that said Diaz
had actual possession of said Land but was not
able to obtain Judicial possession of it under the
former Government of California in consequence of the
occupation of the Country by the Military forces of
the United States soon after the issuance of
said grant.

The originals of said Petition of said
Diaz, with the processes thereupon taken as herein
before shown, exists in the Archives of the former
Government of California and a certified Copy of
the same is herewith filed, marked exhibit "A"
and a Copy of said Original Grant, with a
translation of the same is herewith presented
marked Exhibit "B" and the original will be
produced and proved according to Law as
likewise said medm conveyances.

The Claimants
are not aware of any conflicting claim or title
to said Land or any part of it.

Louis Goussier & Shode
Atty for Claimants

Filed in Office Jan 17th. 1853.

Geo Fisher Secy.

Recorded in Vol 1 of Petitions on pages 483, 484.

Geo Fisher Secy.

7 Deposition of San Francisco April 2^d 1853.
Benito Diaz

On this day before
Court Henry J. Shartau came Benito Diaz
a witness on behalf of the claimants Joseph C.
Palmer et al. petition No 515 and was duly
sworn his evidence being translated by the Secretary.

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Questions of Claimant ~~Benito Diaz~~

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

Ans. My name is Benito Diaz my age
is thirty nine years and I live in Monterey Cal.

2^d Question. Are you acquainted with the
place called "Punta de Lobos" claimed in this case

Ans. I am acquainted with it.

3^d Question. Do you or not know of a
petition being presented to the Government for
this place. If yes. when and by whom was it
presented?

Ans. In the year 1845 I made a petition
for this place.

4th Question. Do you or not know
whether any decree for information was made
by the Governor. and if you do. state what you
know in relation to that subject?

Ans. There was an investigation made
by the order of the Governor. by the Military Comm
andant & the Judge of San Francisco.

5th Question. Are you acquainted
with the hand writing of Gov Pio Pico and of
Jose Montias Moreno. if yes. look upon the
Document now shown you marked exhibit
No 1. & filed herewith. and state whether the
signatures of those persons when they occur in
on upon the said Document are their genuine
signatures?

Ans. I am acquainted with the hand
writing of Pio Pico. and of Jose Montias Moreno.

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I have examined the Document exhibited and have no doubt, having seen them write that their signatures when they appear on the same are genuine.

6th. Question. Were you present when this Document was made or not, and when and how long after its date did you first see it?

Ans. I was not present when it was executed. About two or three weeks after it was executed I received it in Monterey.

7th. Question. Was Judicial possession given you of the said, and if not for what cause did you not procure it?

Ans. It never was given to me, because shortly after the part the American forces took possession of San Francisco.

8th. Question. Look upon the Document now here shown you, marked Exhibit No. 2, to this Deposition, and say whether your signature there is your own genuine signature?

Ans. I have examined the said Document and acknowledge that my signature there is genuine
Question of W. S. Law Agent.

1st. Question. In whose hand writing is the Document, Exhibit No. 1, here and above referred to?

Ans. It is my hand writing.

2^d Question. When were you when you wrote it, and when did you write it?

Ans. I wrote it at San Francisco on the 20th or 21st June 1846. I wrote it in consequence of a letter from Baudini Secretary of the Government stating to the witness that he must prepare his papers and send them down in form immediately because the County was in a critical state. I sent them down by a special carrier accordingly.

4th. Question. Did you write out the part

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on title before you had instructions or Authority from
the Government to do so. or without any such Authority
Ans. I wrote it out after I was informed as
before stated by Bandini who was then Secretary of
the Government. to prepare and make out my
papers. This information was given on account
of my connection with Bandini. I had no other
Authority. or instructions about it.

5th Question. Do you know when & where
Pio Pico signed the Document above exhibited by
the grant in this case

Ans. I do not know positively when he was when
he signed it. but from information of my Cousins I
understood that he signed it on the Road either at
Santa Anna Ventura or Santa Barbara.

6th Question How do you know that Bandini
was at that time the Secretary of the Government?

Ans. I know it because it was notorious that he was
so. and because of his letters to me above mentioned.

7th Question Did he mention in those letters
that he was Secretary of the Government?

Ans. He did not. His letters were private letters.

8th Question. When did you see Pio Pico first
after the making of the grant?

Ans. In the month of July or August 1846 in
the Road at Santa Meaguita.

9th Question. Did you have any Conversation
with Pio Pico when you met him as just stated on the
subject of this grant?

Ans. I did not have any Conversation with
him on the subject. I only saw him a few moments.

Bento Diaz

U. S. Law Agent present

Sworn & Subscribed before me this 24th April 1853.

Henry J. Shanton County Clerk

Filed in Office April 24 1853.

Geo. Fisher Secy.

Recorded in C. B. Vol 2 p 700. Geo. Fisher Secy

Deposition of Office of the Commissioner G. Thompson Burull at
Rio Rico Los Angeles, California.

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Before me G. Thompson Burull
Commissioner duly qualified for the taking of testimony
to be used before the Board of Commissioners to ascertain
and settle Private Land Claims in the State of California
personally appeared Rio Rico a witness in behalf of
Joseph L. Palmer et al Claimants for the Land named
"Punta de Labas" numbered on the Docket of the said
Board with No 515 who upon oath deponent and
saith as follows-

Question asked by Counsel for Claimants
1st Question. What is your name, age, and
Place of Residence

Ans. My name is Rio Rico. I am forty three years
of age, and I reside in the County of Los Angeles.

2^d Question. What Civil Office did you hold
in California in the year 1846.

Ans. I was Governor of the Department.

3^d Question. Who was Secretary of the Government
in the month of June 1846.

Ans. Jose Matias Moreno was acting Secretary

4th Question. You are here shown Exhibit
marked A. No 1 G. T. B. and an asked of your signa-
ture and the signature of Jose Matias Moreno an
genuine checks annexed and was made for the
purposes therein mentioned.

Ans. I believe them to be genuine.
Rio Rico-

Sworn to & Subscribed.

Filed in Office

July 21. 1854

Geo Fisher Secy.

I hereby certify that G. E. Thorne Esq was present
at the time the foregoing testimony was taken acting
for on behalf of and by the authority of J. H. Mac
Kune Esq U. S. Law Agent.

Recorded in E. B.

Vol 5 p 194.

Geo Fisher Secy.

G. Thompson Burull Comr

This page is no part of the Record

Properly sworn to and admitted by
Parliamentary & Governmental Com at

Presidente Local decano de la Asamblea Departamental y Gobernador Constitucional de las Californias.

Depo. of Rio Pa. Co.

Por cuanto D. Benito Diaz ha pretendido para su beneficio personal y el de su familia el terreno conocido bajo el nombre de punta de Lobos sito en el Puerto de S. Teran seis practicas precisamente las averiguaciones ensermentadas usando de las facultades que me son confiadas a nombre de la Estacion Mexicana he venido por decreto de este dia en concederle el expresado terreno, declarandole la propiedad de el por las presentes letras, de conformidad con la Ley de 18 de Agosto de 1824 y Reglamento de 21 de Noviembre de 1828 y Reserva de la aprobacion de la Soberana Asamblea Departamental y bajo las condiciones siguientes.

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1º podra cercarlo sin perjudicar las haciendas, caminos y servicios de ajenos. Lo disputado ra libre y exclusivamente destinandolo al uso o cultivo que mas le acomode.

2º Solicitara del juez respectivo la posesion judicial en virtud de este despacho, por el cual se demarcaran los lindes con las mojones necesarias.

3º El terreno de que se hace donacion es de la Estension de dos sitios de ganado mayor poco mas o menos que comprende desde la Laguna de la Loma Alta hasta la punta de Lobos, y el mismo que demuestra el disenyo que obra en el Expediente. El juez que oviere la posesion lo hara medir conforme a Ordenanza.

En consecuencia a mandado que teniendose por firme y valido el presente titulo se tome razon de el en el libro respectivo, y se entregue al interesado para su resguardo y demas fines.

Dado en la Ciudad de los Angeles a veinte y cinco de Junio de mil ochocientos cuarenta y seis en este papel comun por falta del

vellado.

Pi. Pico

José Matías Moreno Suo Int.
Queda tomada Razon de este título en el
libro correspondiente.

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Moreno J. Thompson
Office of the Commissioner L. Thompson
Burrill at Los Angeles, California.

Before me L. Thompson Burrill Commis-
sioner duly qualified for the taking of Testi-
mony to be and before the Board of Commis-
sioners, to ascertain and settle the private
Land Claims in the State of California
Personally appeared *pi. Pico* a Witness in
behalf of Joseph C. Palmer et al. Claimants
for the land named punta de Lobos num-
bered on the Docket of the said Board with
No. 575. who upon Oath de clareth and
saith as follows.

Questions asked by Counsel for Claimants
Question No. 1. What is your name, Age and
place of Residence.

Answer. my name is *pi. Pico*, I am fifty three
years of Age and I reside in the County of
Los Angeles.

Question No. 2. What Civil Office did you
hold in California in the year 1846.

Answer. I was Governor of the department
Question No. 3. Who was secretary of the G-
overnment in the month of June 1846.

Answer. José Matías Moreno was acting
Secretary. Question No. 4. You are here
shown Exhibits marked A. Et. 1. G. L. 13. and
are asked if your signature and the signa-
ture of José Matías Moreno are genuine
thereto annexed and was made for the
purpose therein mentioned.

Answer. I believe them to be genuine.

Pi. Pico.

Given to and subscribed

I hereby certify that G. C. Thorn Esq. - was
present at the time that the foregoing Testimo-
ny was taken acting for on behalf of and
by the Authority of G. H. M. - Nurse Esq.

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U. S. Law Agent.

Los Angeles July 5th 1854

Thompson Burrill

Commis^r

Filed in Office July 21. 1854.

Geo. Fisher Secy

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15 Deposition of United States of America
Benito Diaz - State of California } S. D.

San Francisco Aug 7. to 1854.

This day came before Peter Lutt Commissioner for
taking testimony to be used before the Board of U. S.
Land Commissioners in said State Benito Diaz
a witness on behalf of the claimants Joseph C.
Palmer et al in Case No 575 of the Docket of said
Board and said witness being duly sworn depo-
sed in Spanish which was interpreted by the inter-
preter to said Board as follows.

The U. S. Associate Law Agent was present.

Questions of Claimants Counsel

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

Ans. My name is Benito Diaz. my age
40 years. My age Monterey County California

2^d Question Are you acquainted with
the Rancho called "Rancho de Labas" if you state
how long you have known it and if it has
been occupied, all you know of its occupation
by whom, when, and in what manner, it has
been occupied?

Ans. I am acquainted with said Rancho
the fact I know of its occupation. I myself occupied
it with my family. I built a small house for the
servants and upland two houses which were already
there for the accommodation of myself and family
I built a canal and had some Oxen and cows
and horses on the place. I had a small garden
in the same year 1845- enclosed and planted
I thus remained till the beginning of 1846.

I was emp-
loyed in the Courthouse at Monterey and was there
required to go there on business as such employee
and was there but a short time when the war
broke out and I did not return to take possession
of the place I took my family with me when I
went to Monterey. I am not certain of the
time precisely, but I think it was in February or
March 1846. In June of that year I came back
myself to the Rancho to get my horses and other
stock off of the place.

3^d Question. Did you continue in the employment of the Mexican Government during the war.

Ans. I did.

4th Question Are you acquainted with the signatures of Pio Pico and Jose Mateos Moreno if you state your means of knowledge. If you look at the Document now shown to you marked "Doc H. S. S. N^o 1 annexed to Depo of Benito Diaz taken before Capt Henry S. Thornton and filed in this case, and state whether the names of said Pio Pico and Jose Mateos Moreno therein subscribed are their genuine signatures?

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Ans. I am acquainted with the hand writing and signatures of said Pio Pico and Jose Mateos Moreno, having frequently seen them both write and thus am respecting the genuine signatures on this paper.

Cross Examined by U. S. Dist Law Agent.

1st Question How did you happen to occupy said Rancho.

Ans. I occupied it because I had petitioned the Government for it and was sure of getting it.

2^d Question. Was there ever any Judicial possession given of said Rancho or any approval of the Departmental Assembly.

Ans. I know of no Judicial possession being given, or of any approval of the Departmental Assembly in this case.

3^d Question. After you removed your hoes and stock and abandoned the place by whom if any person was the place occupied and when?

Ans. I did not go back and had no personal knowledge of its subsequent occupation.

Reexamined by Claimants Counsel.

1st Question Was the garden planted in 1846?

Ans. It was not when I was there.

Benito Diaz

Subscribed & Sworn to on 7th day Aug AD 1854

Peter Latt Compt^r

Filed in office Aug 8, 1854 Geo Hilborn Secy.

Recorded in Ev B. Vol 5 p 260. Geo Hilborn Secy.

17 Deposition of United States of America
Jose M. Moreno State of California F.S.

San Francisco Dec 7th 1854.

This day came before Peter Latt Commissioner for taking testimony to be used before the Board of U. S. Land Commissioners in said State Jose M. Moreno a witness on behalf of the Claimants Joseph L. Palmer et al in Case No 575 on the Docket of said Board, and said witness being sworn deposed in Spanish which was translated by the interpreter to said Board as follows.

The U. S. Associate Law Agent is present.

Questions by Mr Howard for Claimants
1st Question What is your name, age and place of residence?

Ans. My name is Jose Malias Moreno, my age 36 years, my residence San Diego California.

2^d Question. State what Office you held under the Mexican Government in California in 1846?

Ans. I was Secretary of the State for the Departmental Government of the Californias.

3^d Question. Look at the Document now shown you marked "A, L" as an exhibit to this Deposition purporting to be an original grant heretofore filed in this Case and state what you know respecting the execution, the signatures, and the delivery of said grant.

Ans. I recollect this Document I saw it on the 25th June 1846, when I signed it, this is my signature as Secretary ad interim, and also my signature to the Certificate of Registry and I saw Pio Pico sign it as Governor, this is his genuine signature. I think Benito Diaz made the body of the grant himself, after the grant was completed I delivered it to the Agent of Benito Diaz, on the Road from Los Angeles to Santa Barbara. The Agent to whom I delivered it according to my recollection was Enrique Celiy | Jose Malias Moreno

Subscribed and sworn to before me on this 7th day of December A.D. 1854.

Peter Latt Court & Co

Filed in Office Dec 8th 1854.

Geo. Fisher Secy.

Recorded in Ev B. Vol 11. p 54.

Geo Fisher Secy.

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Deposition of United States of America }
John I. Vioght State of California. } J. I.

San Francisco March 8th 1855

This day came before Peter Latt Commissioner for taking testimony to be used before the Board of U. S. Land Commissioners in said State John I. Vioght a witness on behalf of the U. S. in case No 575 wherein Joseph L. Palmer and others are claimants and said witness being sworn deposed as follows.

Mr Howard appears for Claimants
Questions of U. S. Associate Law Agent.

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

Ans. My name is John I. Vioght, age 55 years, my residence San Francisco County California.

2^d Question. How long and where have you lived in California.

Ans. I have lived in California since 1837 principally in San Francisco

3^d Question. Do you know the lands embraced within the following boundaries to wit. Northernly of the Sea which flows to the Port of San Francisco. Southernly of the Hill known as the Hill of the Laguna Honda, in the rear of the Mission of San Francisco on Dolores. Easternly of the high Hills and Westernly with the Punta de Labas

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on Wolf's Point, from which said track takes its name.
Ans. Yes. I know the lands within that boundary
3^d Quinteria. What knowledge have you of the
lands. did you know them well, and did you
know of them ever having been occupied or cultiva-
ted prior to July 1846?

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Ans. I frequently rode over said lands on
pleasure excursions: I never saw any occupation
or cultivation of the lands prior to July 1846.

H de Quinteria. Do you know Benito Diaz
or did you ever know of his having any claim to
said land?

Ans. I know Benito Diaz. I never knew
of his having any claim to these lands.

John J. Voigt

Subscribed & sworn to before me on
this 8th day of March AD 1855.

Peter Latt Com^r &c. &c.

Filed in Office March 9th 1855

G E Fisher Secy.

Recorded in C. & B. Vol 11. p 551

G E Fisher Secy.

Deposition of United States of America
Jonathan D. State of California 3 ss.
Stephensan. San Francisco

March 13. 1855

This day came before Peter Latt Commissioner for
taking testimony to be used before the Board of
U. S. Land Commissioners in said State Jonathan
D. Stephensan, a witness on behalf of the United
States in Case No 515 on the Docket of said Board
wherein Joseph. G. Palmer & others are claimants
and said witness being duly sworn
deposed as follows.

Mr Howard is present for Claimants.
 Questions of U. S. Law Agent.

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

Ans. My name is Jonathan D. Stephens, my age 55 years, my residence San Francisco California.

2^d Question. Look at the papers now shown you marked "A. D." and "B. P." respectfully as exhibits herein purporting to be copies of a correspondence between you and W. H. Halleck and state whether you recollect such correspondence and what led to it.

(2^d Question objected to by Claimants Counsel)

Ans. Yes, I recollect the correspondence very well, and I think this is a copy of it.

The inducement to this correspondence was a letter addressed to me by Capt Halleck as Secretary of State requesting information respecting the claims abouts of Pio Pico, and also requesting me to ascertain whether he had made certain grants of Land while he was at Los Angeles which he was represented to have made?

3^d Question. State what information you enclosed to said Halleck with said letter. How it was understood that Pico was not at Los Angeles after June 17th 1846. State also whether you have examined the actions of the former Government of California with a view to ascertain where Pico was at that time of year with what results?

(3^d Question objected to by Claimants Counsel)

Ans. I enclosed to Capt Halleck with that letter a list of grants which I understood from Abel Stearns and other residents of Los Angeles were signed by Pio Pico the night I

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previous to his leaving Los Angeles for Mexico about the 8th of August 1846.

Abel Stearns and others who were officials about Los Angeles and had been connected with the Mexican Authority. previous to my writing that letter and in the early part of the Summer of 1847 at Los Angeles informed me that Pio Pico was in and about Santa Barbara from about the middle of June to the middle or latter part of July 1846. That he was then for the purpose of raising troops as Governor, to resist Gen Castro who was reported to be marching Santa Barbara to attack Pico.

In the fall of 1848 when I was in Monterey, Capt Halleck showed me letters which were in the archives in his capacity as Secretary of State, which went to show that Pico was at Santa Barbara at the time I have mentioned and that his absence from Los Angeles coincided with the time I have stated.

These papers were of an official character connected in some way with Pico's actions at that time as Gov. I do not now recollect the precise purports of them, they were referred to at the time by Mr Halleck as confirmatory of my accuracy of information I had given him in the letter. This was the only examination I recollect to have made of the Archives upon this subject.

Hate Luntian. When did Benito Diaz live in 1846 & 1847. State whether he had any building or improvements on the land claimed in this case when you knew him?

Ans. I first knew Benito Diaz in Mex on April 1849 at Monterey and he there informed me that he lived in "Yuba Buena" in 1846, and just before the Americans took

possessor of the County. That he was collecting materials for building a house here, & became alarmed about the time the Americans came and fled for Mexico on the lower County leaving his abodes and building materials on the ground. He never told me he had any house or improvements on the land claimed in this case, and I do not think he had any.

5th Question. State whether or not this claim comprehends the Residue and presents Government Reserve, and lands used of Mexico as a Military Post?

(5th Question. Objected to Claimants Counsel)

Ans. I know nothing about it except from common report, and in this way I have always understood that it did not have such reserves.

San Antonio, D. Stephens

Subscribed & Sworn to before me
on the 13th March AD 1855

Peter Latt Comr

Filed in Office March 13. 1855

G. E. Hilborn Secy

Recorded in En. B. Vol 11. p 573

G. E. Hilborn Secy

Deposition of United States of America }
Jas. Alex Forbes State of California } Sd.

San Francisco March 20 1855.

This day came before Peter Latt Commissioner for taking testimony to be used before the Board of U. S. Land Commissioners in said State James Alex Forbes a witness on behalf of the

United States in Case No 515 on the Docket
of said Board when in Joseph E. Palmer
et al are Claimants - and said witness being
sworn deposed as follows.

Mr Howard is present as Counsel for Claimant
Deputations of U. S. Law Agent.

1st. Question. What is your name, age
and Residence

Ans. My name is James A. Forbes, age
50 years. Residence Santa Clara California -

2^d Question. Do you know when Pico
the last Mexican Governor of California was
from the 17th of June 1846, to the first of August
in the same year, if you state when he was and
how you know it?

Ans. I know that on or about the
17th of June 1846, he left Los Angeles for Santa
Barbara, and I saw him there up to July 3rd 1846,
then I left there for San Francisco, leaving him there
I know this because I saw him and had conver-
sation with him at those points at the times
mentioned -

James Alex Forbes

Subscribed & Sworn to before me
on this 20th day March AD 1855

Peter Latt Compt

I admit the foregoing Deposition in Evidence
to have the same force and effect as though taken
filed and submitted as Evidence at the
time the Case was submitted
March 20th 1855.

V. E. Howard attorney for
Claimant.

Filed in office March 20th 1855

Geo Fisher Secy

Recorded in Dr B. Vol 11 p 633. Geo Fisher Secy.

24
Deposition of United States of America

James L. Loran State of California.

Mr

San Francisco March 26 1855

This day came before Peter Latt Commissioner for taking testimony to be used before the Board of U. S. Land Commissioners in said State James L. Loran a Witness in behalf of the United States in Case No 515, on the Docket of said Board wherein Joseph L. Palmer et al are claimants and said Witness being duly sworn deposed as follows.

Mr Howard appears for Claimants

Questions by U. S. Law Agents.

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

Ans. My name is James L. Loran my age 48 years, and my residence Merced County California.

2^d Question. Are you acquainted with Benito Diaz the original grantee in this case of gra. State how long you have known him and what has been your intimacy with him

Ans. I am acquainted with the said Benito Diaz, and have known him ever since 1846 - We have been very intimate with each other, so much so that I have done business for him on various occasions as his interpreter & agent.

3^d Question. Did you ever hear him say any thing about a grant of Land called "Punta de Lobos" if gra. State when you first heard from him that he had such a grant.

Ans. I have heard him say that he had such a grant, and I think he told me this in 1847, and said that he had sold it

4th Question. Did you ever learn

from him the nature of said grant when it was actually made out and signed if you state generally what he told you about its trusting to validity or invalidity -

4th Question objected to by Mr Howard.

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Ans. Don Benito Diaz told me that after the Americans took Moantery he went below and while there he made out the said grant in his own hand writing and that in order to make it valid he dated it back in the month of June -

5th Question. Where did Benito Diaz reside and at what place did he build a house in 1846 -

Ans. In the latter part of 1846 when I first became acquainted with him he lived in Monterey - but he afterwards told me that in May and June of that year he was Collector of the Customs here at San Francisco and had lived here during those months and showed me where he built a house on Jackson Street between Kearny and Montgomery Streets where the International Hotel now stands. This conversation was in Winter of 1850 - or in the Spring of the latter year.

Cross Examined by Mr Howard for Claimant -

1st Question Did you tell Bethuel Phelps that you would testify in favor of this claim in this case if he would give you \$200 - ?

Ans. I did not. I never had any conversation with about any giving testimony in this case -

The Witness here called for the question to be repeated. the question

was then repeated to him as before asked, aside from the above written interrogatory in the following words.)

2^d Question. Had you ever any conversation with said Phelps upon the subject of your giving testimony in this case?

Ans. I had. I gave the latter clause of the above written answer in the way it is written, because when the question was asked I thought it was intended to connect my answer with the first clause, and I never had any conversation with him of the import suggested in the 1st Question or Cross Examination.

3^d Question. Have you never said to Phelps or others, that you could give impotent testimony in favor of his claim.

Ans. No. I never did say that I could only by hearsay.

4th Question. Do you claim any interest in any of the land embraced with in the limits of this grant.

Ans. None whatever.

James C. Craine

Subscribed & Sworn to before me
this 26th day March AD 1855

Peter Lott Court.

Filed in Office March 27th 1855

Geo. Wilson Secy.

Recorded in Cr. B. Vol 11 p 644. Geo. Wilson Secy

It is hereby stipulated and agreed by and between the parties in Case No 575 before the U. S. Board of Land Commissioners J. S. C. Palmer and others claimants that the annexed Deposition this day taken may be read in evidence with the same force and effect as though duly taken & filed before the Case had been submitted.

J. H. McKim U. S.
Law Agent -
V. E. Howard

Deposition of United States of America }
Jno Watson State of California } J. S.

San Francisco July 16 1845

This day came and was sworn before Commissioner Peter Latt. John Watson on behalf of the U. S. in Case No 575 on the Docket of the Land Commission, wherein Joseph C. Palmer and others are claimants. Said witness deposed as follows.

Mr Howard appeared for claimant

Questions of U. S. Associate Law Agent.

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

Ans. My name is John W. Watson my age 38 years. My residence Santa Cruz County, California

2^d Question. How long have you resided in California, and at what point.

Ans. I have lived in California since October 1849. I have been principally in Santa Clara and Santa Cruz Counties.

3^d Question. Do you know a certain Benito Diaz and if you, how long have you known him?

Ans. I do know him. I have known him since April 1850.

4th Question. Did you ever know of a claim for the Land called "Punta de Lobos" in San Francisco County if yes. When and from whom did you first hear of it?

Ans. I heard of said claim in the Spring of 1857. from Benito Diaz. that was the first I heard of it.

5th Question. Did you ever hear any business transactions for the purchase of Land with said Benito Diaz. and if yes - State all the circumstances which occurred between you relative to that transaction.

Ans. I had such conversation with him. Charles Clayton, Joshua Rodman, and myself purchased the interest of Benito Diaz in the Santa Clara grant Richard in 1857. In the conversation we had at the Mission of Santa Clara. said Diaz remarked that a good many frauds had been practiced upon the people of California that among those frauds was the granting of the Mission of San Jose, and of the Land called "Punta de Lobos" which he represented to be claimed by Thos O. Larkin. That he knew of his own knowledge that both the grants were made since the hoisting of the American Flag at Monterey -

That one if not both of these titles were written by one Augustus Arenas San of Luis Arenas, then resident of Stockton. I had a conversation about a year afterwards with said Diaz in which he stated substantially about the same things. Said Diaz in the former conversation

I have mentioned spoke of the title to the
rechar of Santa Clara and represented it to
be good.

John S. Watson.

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Subscribed & Sworn to before me
on this 16th day February 1855

Peter Latt Commissioner

Filed in Office Feb 19th 1855

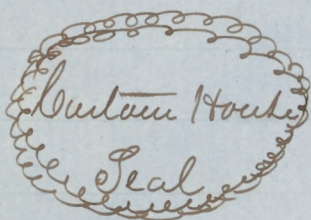
G. E. Fisher Secy

Recorded in Ev B Vol 11 p 427

G. E. Fisher Secy

Petition of
Benito Diaz

Stamp of the Fourth Class Two Reals.
Provisionally Authorized by the Maritime Court
House of the Port of Monterey in the Department
of the Californias. for the years eighteen hundred
and forty four and Eighteen hundred & forty five.



To His Excellency the Governor.

Benito Diaz

a native of California and resident of San Francisco
in the form which may have most force in Law
and with all proper respect represents to your Excell
ency. That being the owner of a number of head
of Cattle, and not having any farms where are
to place them in order that they may increase,
and there being a tract of Waste Land within
the jurisdiction of San Francisco known by the
name of "Wolfs Point", bounded on the North by
the Sea which runs into the Port of San Francisco,
on the South by the ridge of Hills at the rear of the
Mission of San Francisco, known as the Hills
of the deep Lake, on the East by the high grounds
and on the West by Wolfs Point all of which
will include two farms for large Cattle a little

more or less. It is to be observed that the ruins of the Barracks of San Francisco and also the Fort. both of which exist within the aforesaid farms are not included in this petition (unless the Government should wish to make me a present of said Ruins) and in that case I would oblige myself to erect a house in the Town of San Francisco, suitable for the Military Commandant, which house shall be twenty five Varas long & six Varas wide.

Therefore I petition that your Excellency will be pleased to consider my solicitation and concede me the Land which I petition for all of which I hope for, from the well known kindness of your Excellency, and of which I shall be benefited. I mean what may be necessary &c.

Guba Buena April 3^o 1845

(Signed) Benito Diaz

(Marginal Decree)

Angelos 24 de May 1845.

Let it be sent to the proper Judge for information and it is expected that the Military Commandant, shall also state what may be convenient in order that when returned and having seen all this, the Government may determine in favor of the Petitioner.

(Signed) Pico

In obedience to the preceding Decree relative to repating about the lands which the petitioner asks for, I say, that it is being waste, and that the petitioner possesses the necessary Legal requisites in conformity with the Law of the Case but that I cannot give any information relative to the Military Post, as I am ignorant of its boundaries

(Signed) Lo de la Cruz Sanchez

Military Captaincy of San Francisco

October 18th 1845

In obedience to the Supreme Decree of the
intermediary Governor of this Department
given on 24th May of the present year - I
say that the land which the interested party
petitioned for is being waste. I am of opinion
that it may be conceded to him, but that
the two Military posts of the Barracks
and Fort should not be included in the
concession.

(Signed) Geo Sanchez

Filed in Office Aug 17th 1853.

Geo Fisher Secy.

Grantation of
Title

Translation

Don Pico Quint Member of the Departmental
Assembly and Constitutional Governor
of California

Good Seal Whereas Don Benito Diaz has
solicited for his personal benefits and that of
his family the land known by the name of
"Punta de Lobos" in the Port of San Francisco, the
necessary investigations having been previously made
I have in virtue of the facilities conferred on me
granted to him in the name of the Mexican Nation
by a Decree of this day, the said land declaring
to him the ownership thereof by these presents in
conformity with the Law of 18th August 1824 and
the Regulations of 21st November 1828. Subject to
the Approval of the most Excellent Departmental
Assembly, and to the following Conditions.

1st. He may fence it without prejudice to the
highways Roads and elements destined to be

the use and cultivation which may best suit him.

2^d He shall ask for Judicial possession from the respective Magistrate in virtue of this Dispatch, by whom the boundaries shall be marked with the necessary land marks.

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3^d The Land of which donation is made is of the extent of two Sitios de ganado Mayor a little more or less Comprehending from the Lagoon of the high Hill to the "Punta de Lobos" and the same which is shown by the map which accompanies the record (Expedient)

The Judge who shall give the possession shall cause it to be measured according to ordinance

Wherefore I command that holding the present title as firm and valid, a record be kept of it in the Book to which it belongs and it be delivered to the interested party for his security and other ends.

Given in the City of Los Angeles on the 25th day of June Eighteen hundred and forty six. On this Command paper for want of Sealed -

(Signed) Pio Pico

José Matías Moreno

Secretary ad int

This title has been Recorded in the proper Book

(Signed) Moreno

Filed in Office Aug 17th 1853

José Yñigo Secy

Exhibir A.

Habilitado provisionalmente por la Aduana
Maritima 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.

Rancho Punta

Sgr. Micheltreun.

Pablo de la Guerra.

de

Lobos.

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} Custom House

} Seal

Desmo. Sor. Gobernador.

Benito Diaz, natural de Californias y vecino de
S. Francisco ante V. E. como mayor haya lugar
y con el debido respeto hace presente: que
habiendo algunas labores de ganado mayor
y teniendo un sitio adecuado para
su aumento: y hallandose situado sin poraje
en la Jurisdiccion de S. Francisco, conocido con
el nombre de la punta de Lobos, colindante
al Norte con el mar que corre al puerto de
S.^o Fran.^{co} al Sur con el Cerro que está a la
espalda de la Abiccion de S. Francisco conocido
con el nombre del Cerro de la Laguna Honda
al Oriente con la loma alta y al poniente con
la punta de Lobos que comprenderá proci-
mas o menos otros sitios de ganado Mayor
abreventado que las ruinas del Presidio de
Sn. Francisco y el Castillo que se hayan dentro
del sitio que será escueto de la peticion a no
ser que el Gobierno quiera agradecer con
dichas ruinas, comprometiendome si se opta
a fabricar una casa en el puerto de S. Fran.^{co}
para comandancia militar que tenga
veinte y cinco varas de largo y seis de ancho.

Por tanto A. V. E. Suplico tome en
consideracion mi solicitud coneciondome
el terreno que pretendo lo que espero de la
acreditada voluntad de V. E. en lo q. recibire
gracia. Demando lo necesario. 2.^o 2.^o

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Yerba-Buena. Abril. 3. de 1845.

Sequed. Benito Diaz.

Marginal Decree.

Angeles. Mayo. 21. de 1845.

Pase a informe del Jues respectivo y supiera que el Sr. Comandante Militar digo lo que tenga por conveniente p^a que en vista de todo nuestro que sea al Gob^{no} este resuelon lo que convenga a la parte que solicita.

J. Pico.

En vista del Superior decreto que antecede sobre informacion del terreno que el Solicitante p^{te}tiende decir que se halla baldio y q^o dho. Solicitante obtiene los requisitos necesarios conforme la ley de la materia pero que el punto que actualmente ocupa (el punto) militar no podria dar una informacion por no saber sus ejidos.

Pueblo de San Fco Agosto. 16. de 1845.

J. de la Cruz Sanchez.

Comandancia Militar de San Fran^{co} Oct. 18 de 1845.

No conformidad con el Sup^r decreto q^o antecede expedido por el Sr. Gobernador Interino de este Departamento en 21. de Mayo del presente año deho decir que hayamos baldio el Solicitante crey se le puede conceder un compendio no compendio en la concesion las otras presuntas Militares del Presidio y Castillo q^o se hallan compendidos en la Solicitud.

J. Sanchez.

I the undersigned do hereby certify the foregoing to be a true and faithful copy of the original found on file in the archives of the Secretary of State for the Territory of California.

In the absence of the Secretary of State.

Wm E. P. Mansuett.

Port Translator.

Filed in Office Jan. 17th 1853. Geo. Fisher Secy.

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Punta de Lobos

Original Grant Copy

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(Sello)

Por cuanto D. Benito Diaz ha pretendido para su beneficio personal y el de su familia el terreno conocido bajo el nombre de punta de Lobos, sito en el puerto de O. Francisco; practicadas previamente las averiguaciones convenientes usando de las facultades que me son conferidas a nombre de la Estacion Mexicana he venido por decreto de este dia en concederle el expresado terreno declarandole la propiedad de el por las presentes letras de conformidad con la ley de 18 de Agosto de 1822 y Reglamento de 21 de Noviembre de 1828 a reserva de la aprobacion de la Coena Asamblea Departamental y bajo las condiciones siguientes.

1^a Que pueda cercarlo sin perjudicar las haciendas, caminos y servidumbres, de otro modo al uso y cultivo que mas le acomode

2^a Que solicite del juez respectivo le de la posesion judicial en virtud de este despacho por el cual se demarcaran los lindes con las mofoneras necesarias.

3^a El terreno de que se hace donacion es de la estension de dos sitios de ganado mayor o mas o menos que comprende desde la Laguna de la Loma Alta hasta la punta de Lobos y el mismo que demuestra el diseño que obra en el Expediente. El juez que diere la posesion lo hara medido conforme a Ordenanza.

En consecuencia mando que teniendose el presente titulo por firme y Valido se tome razon de el en el libro a que corresponde, y se entregue al interesado para su resguardo y demas fines. Dado en la Ciudad de los Angeles a veinte y cinco de Junio de mil Ocho cientos cuarenta y seis en este papel comun por falta del sellado.

Propio José Matias Moreno, Sec. Int.

Queda tomada Razón de Este título en
el libro correspondiente
Moreno.

Office of the Board of Commis-
sioners to Ascertain and settle the private
Land Claims in the State of California

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I George ^{W.} Fisher, Secretary of the
Board of Commissioners to ascertain and
settle the private land Claims in the State
of California and as such now having
in my Office and under my custody all
the papers and books of Record comprising
the Archives of the said Board do hereby
certify that the preceding and hereunto
annexed pages of tracing paper, numbered
from to three inclusive and each of which
is verified by my initial G. W. Fisher
true and accurate copies of certain docu-
ments on file and forming part of the said
Archives in this Office having referred to the
Case No 518 on the Docks of the said
Board, wherein Joseph, C. Palmer et al.
are the Claimants U. S. the United States
for the place named, "Punta de Lobos"

Seer In Testimony whereof I
have hereunto signed my name
officially and affixed my private
seal (not having a seal of Office) at the
city of San Francisco, Cal the 22nd
day of June A. D. 1854.
Geo: Fisher Secy

Filed in Office June 21st 1854
Geo: Fisher Secy

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"B. P. L. Exhibit State Department Territory of Cal.

to Depo of I. D

Monterey July 26th 1848.

Stephensau Meli Sir

13. 1855

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It is highly probable that the persons who obtain grants or deeds of Sales of Land from Pio Pico just as he was leaving the County will now on hearing of his return to California endeavor to obtain from him certificates that these grants or Deeds of Sale were not Audited. I refer particularly to Deeds of Sales of Land by Pio Pico which are dated at Las Angeles about the 20th June 1846, whereas it is believed he was not in that place between about the middle of June and the latter part of July.

Some of these letters purport to be Recorded on the corresponding Book of Records which Book has been abstracted from the Territorial Archives. There are reasons for suspecting that this Volume of Records is now in the hands of some one of the holders of these Audited letters and that it is so retained in order to get Pio on his return to this Country to enter these letters upon the Record, or if they have destroyed the Book to get his Certificates that they were entered according to the dates they bear.

Something will undoubtedly be sought for from Pio to strengthen their unjust Claims to Government property.

It is thought that if you can establish a friendly intercourse with Dan Pico before he can have any Communication with these holders of fraudulent titles you may obtain from him a statement of the real facts of the case. The matter should be acted on with promptness, and will require much care and discussion in its management.

Very Respectfully Your Obedt Servt

H. W. Hallick

Lieutenant of Engineers & Secretary of State
Cal J. D. Stephenson. Commander Southern
Military District Los Angeles.

Filed in Office March 13th 1855

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Geo Fisher Secy.

Before Board of U. S. Land Commissioners
to ascertain and settle private Land claims
in the State of California.

In the matter of
the petition of Joseph L. Palmer et al. in
Case No 515 Claiming Wolfs Point. The claimants
by Attorney hereby file a full release of Bonito Diaz
from all responsibility for any (sale) guaranty of
title.

Thos. Thompson & Stode
attp. for claimants

April 2nd 1855-

Filed in Office April 2nd 1855.

Geo Fisher Secy.

Recorded in Journal Vol 3 page 310

Geo Fisher Secy.

39 "A. P. L. Exhibit
to Depo of J. D.
Stevenson.

Head Quarters T. M. District California
Ciudad de las Angeles Sept 17th 1847

Sir,

The enclosed is all the information I can
give in answer to the inquiries contained in your
letter of the 23^d of August last. Except that it
is perfectly understood and can be proved,
I am informed, that Gov Pico left here not later
than the 17th June and did not return for
at least four weeks, and that the Deeds
alluded to in the within were all signed the
night before Pico left the Pueblo and when the
United States was in possession of Commodore
Stockton's forces between here and San Pedro,
and were all antedated which of course
renders them void besides the proper forms
were never complied with and no Departmental
Assembly has ever yet since confirmed the grants.

I have the honor to be Very
Respectfully Your Obedt Servant

J. D. Stevenson
Cal. Commanding
T. M. District California

H. W. Halluck
Secretary of State.

Filed in Office Mech 13th 1855

Geo. Fisher Secy.

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Punta de Lobos.

Doce: H. J. y
N. 2. amnes Benito Diaz y
Dijo: af de su esposa Doña Luisa Loti de Diaz
nito Diaz taken y demas herederos y sucesores y de quien
before Com de Ellos hubiere titulo voz y fama en cual
Hany. 2.
Thon-ton.

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En el puerto de Monterey de Alta California, a los diez y nueve dias del mes de Setiembre del año de mil ochocientos cuarenta y seis, ante mi Walter Bolton juez de paz de Esta Demarcacion y ante los testigos que subscriben, comparecio Don N. 2. amnes Benito Diaz y Dijo: Que por si y a nombre de su esposa Doña Luisa Loti de Diaz nito Diaz taken y demas herederos y sucesores y de quien before Com de Ellos hubiere titulo voz y fama en cual Hany. 2. quiera manera, vende y da en venta publica y Enajenacion perpetua su parte de heredad y parte siempre fama a Don Tomas O. Larkin de Esta Vecindad un terreno que le pertenece en propiedad por concesion que de el le hizo el Excmo don Gobernador del Departamento, Don Juan Pico segun consta del titulo que va apegado a la presente escritura fecha veinte y cinco de junio del presente año. Cuyo terreno se compone de Dos sitios de ganado mayor mas o menos, situado en la ensenada y puerto de San Francisco con los linderos que dicho titulo demuestra que son desde la Laguna de las Lomas Alta hasta la punta de Lobos. Declara el vendedor no tener enajenado ni empeñado y que Esta libere de todo gravamen publico, y como tal se lo vendia en el precio de un mil pesos, en Moneda de plata comun y acunada, que tiene recibidos a su entera satisfaccion: que desde ahora se desprende y aparta del dominio, propiedad y otro cualquiera derecho que le asista al Reperido terreno, renunciandolo y trasmitiendolo en el comprador para que disponga de el como de cosa propia; obligandolo a el Otorgante a que esta Venta le sea cierta segura y efectiva al comprador y que no le inquietara ni movera pleito ninguno. En cuyo testimonio lo firmo con miyo y los dos testigos que subscriben.

Walter Colton
Chief Magistrate
Monterey
Benito Diaz

J. de Castaneda

José Loaquin Gomez

Guillermo R. Gurner

Secretario de Magistrado.

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En dicho dia, mes y año compareció
especialmente ante mi y los ya mencionados testigos
Doña Luisa Soto de Diaz, esposa de Don
Benito Diaz y dip. Que en nombre suyo y de
los hijos que en la actualidad tiene y de
los que en adelante tenga, da por bien ven-
cido el paraje ante mencionado y que renun-
cia espontanea y voluntariamente todo dere-
cho que a el pudiera tener ella y otros sus
hijos -

Walter Colton, Chief Magistrate
Monterey # Luisa Soto # J. de
Castaneda. José Loaquin Gomez
Guillermo R. Gurner
Secretario de Magistrado.

This Instrument of Writing
was sealed signed and delivered in
this Office and in my presence this nineteenth
day of September, One thousand eight hun-
dred and forty six

Walter Colton
Alcalde of Monterey
William R. Gurner - Secretary.

J. George Fisher Secretary
to the U. S. Land Commission to ascertain
and settle private land claims in the state
of California, hereby certify the foregoing to be a
true and correct copy of Doc: H. L. G. No
2. to Deco: of Benito Diaz, in case No 515.
Joseph C. Palmer et al: U. S. the United States

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now on file in this Office.

In Testimony whereof I
have hereunto signed my name, at Office
at the City of San Francisco, Cal. this 23rd
day of March. A. D. 1855.

Geo. Fisher Deery

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4th Dec. Ho. S. J.

In the Port of Monterey in Upper
No. 3. Annexed California on the Nineteenth day of the
to depo. of Benito Diaz. Month of September One thousand eight
hundred and forty six, before me

Translation of

Walter Cotton Justice of the Peace of
this Demarcation, came Don. Benito Diaz
and he declared that for himself and
in the name of his wife Dona, Cecilia
Soto de Diaz and all other heirs and
successors and of whomsoever of them
should have title voice and fame
in any manner whatever, he sells and
gives in public sale and perpetual
alienation by right of inheritance
forever to Don. Thomas O. Larkin of this
Demarcation a certain tract of Land which
belongs to him in ownership by grant
made to him thereof by His Excellency
the Governor of the Department Don Pio
Pico as made to appear by the title
hereunto annexed dated the 25th of June
of the present year which tract of land
is composed of two square leagues, a
little more or less situated at the
Entrance and Port of San Francisco
according to the boundaries described
in the said title, which are from the
"Laguna de la Soma Alta" to Point
Lobos". The said declares not to have
sold, alienated or pledged it and that
it is free from all public incumbrance
and as such he sells it to him for the sum
of One Thousand Dollars in Current
Money, the receipt whereof he acknowl-
edges to his satisfaction; that hence
forth he ceases and separates himself from
the dominion, ownership and whatever other

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right he may have to the said tract of land
 renouncing it and transferring it unto the
 Vendor, that he may dispose of it as a
 thing of his own, the Vendor obligating
 himself that this Sale shall be certain
 done and effective to the Vendor and
 that he will not molest him or bring any
 suit against him - In testimony whereof
 he signed it with me and two Scribes calling
 witnesses (Signed) Matta Cotton
 Chief Magistrate Montevideo
 (Signed) Benito Diaz (Signed) J. D. Castaneda
 (Signed) ^{Jose} Joaquin Gomez
 (Signed) Guillermo R. Lanza Secy to the Magistrate

On the aforesaid day, month and year before
 me and the witnesses above mentioned,
 came Dona Susana Soto de Diaz, wife of
 Don Benito Diaz and declared that
 in her own name and that of her children
 which she now has and of those she
 may have, she acknowledges the aforesaid
 place to be justly sold, and that she
 freely and voluntarily renounces all her
 own right and that of her said children
 thenceforth (Signed) Matta Cotton Chief
 Magistrate - Montevideo (Signed) Susana Soto
 (Signed) J. D. Castaneda (Signed) Jose Joaquin
 Gomez (Signed) Guillermo R. Lanza Secy
 to the Magistrate.

A true and correct
 translation of its Original in case No 515
 Joseph de Palma vs. the United States
 now on file in this Office as a cate
 gical Copy - Witness my official
 signature this 2nd day of April A.D. 1853
 Geo. Fisher Secy

47 Release

Before Board of U. S. Commissioner
to ascertain and settle private Land
Claims in the State of California

In the matter of the petition of J. C.
Palma et al in Case 515 claiming
Woods Pome, the claimants by attorney
have by file a full Release of Vicente
Lopez from all responsibility for any
quantity of title.

394 ND
PAGE 44

Lones, Tompkins & Strover
April 2^o 1853

Filed in Office April 2^o 1853
Geo. Fisha Secy

Recorded in Journal Vol 3 page 310
Geo. Fisha Secy

Stipulation No. 515. Joseph C Palma et al Claimants

It is hereby stipulated that the
announced deposition of Vicente Gomez
may be deemed and taken as duly filed
in the Case before the matter was
submitted to the Board.

J. H. McKinn
U. S. Law Agent
V. E. Howland
Atty for Claimants

Filed in Office May 17. 1853
Geo. Fisha Secy

48

AD

49 [illegible] of [illegible] [illegible] of A. S.

H. P. Gomez of United States of America
"V. P. Gomez" State of California Dep:

San Francisco May 17. 1855

On this day before Commissioner S B
Furwell came Vicente Prefecto Gomez a
Witness on behalf of the United States in
Case No. 515 wherein Joseph de Palma et al
are claimants, who after being duly sworn
deposed as follows, his recollection being
interpreted by the interpreter of the Board

The U. S. Law Agent is present

The Howards appeared as atty for claimants
Dusted by U. S. Law Agent
1st Question.

What is your name age and
place of residence

Answer. My name is Vicente
Prefecto Gomez my age 31 years and I reside
in Monterey California
2^d. Question.

Look at Document marked
A. S. T. No 1. annexed to deposition of Benito
Liang and marked A Nos G S B and
attached to the deposition of Pio Pico and
filed in this Case and state whether you
ever saw the said document before, if yes,
when, where and state all you know about
it, and when and under what circumstances
it was signed if you know the same.
Answer.

I have Examined the said document
and can state that I have seen the same
before. I saw it in the Jurgado of Monterey
at the time that Benito Diaz sold it to
Mr Lubkin. The signed document was

signed at Los in 1846 at the solicitation
of Benito Deaz. This is all I know relative
to the document
3rd Question.

Who were present at the signing
of the Document by Governor Pico?

Answer. Rayetano and Luis
Arenas were present - And myself and Benito
Deaz. I do not remember more than those
4th Question.

Do you recollect when the Americans
took possession of Monterey in 1846 if you
was the said Document signed before or
after that event and how long?

(4th Question Objected to by Claimants Counsel)

Answer. The Americans took possession of
Monterey on the 7th day of July 1846 and
the said Document was signed after
the occurrence of that event. I do not
know how long afterwards, We were at
Los Angeles with a force under the Command
of Don Jose Castro at the time

The attorney for the
Claimant declines to cross examine the witness
Vicente Gomez

Sworn and subscribed before me this
seventeenth day of May 1855.

J. B. Fawcett Comr.

Filed in office May 17 1855

Geo. Fisher Secy

Recorded in Ev. B Vol 11 p 744

Geo. Fisher Secy

57

Received, San Francisco March 23^d
1855. of George Fisher Secretary of the Board
of Commissioners to ascertain & settle the
private Land Claims in the State of
California "an Original Spanish Docu-
ment marked "Doc" H. J. L. No. 2 on
the attornel - record to the Deposition of Benito Diaz
for the claim taken before Commissioner Hany. J. Thornton
ant for Orig April 2^d 1853. for the purpose of having
real papers the same recorded in the County of San
Francisco to Deliver the same to the secre-
tary of the said Board, it being a part of the
file of papers. No 575. Incept. C. Palmer
for the "punta: de Lobos:

D. C. Howard
for claimant

Filed in Office March 23. 1855
Geo. Fisher Secy

394 ND
PAGE 47

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53

San Francisco

April 26th 1854

Mr George Fisher Esq^r

Sec of Board of
W. O. Land Comm^r

San Francisco Cal

Punta de

Lobos

Letter of V. C.
Howard

Sir.

Wishing to avail myself of the opportunity that offers of taking the testimony of witnesses residing in Los Angeles County to be used before the W. O. Comm^r I have to Request that on Receipt of this you will forward to Commissioner Buzel the Original title or grant of Pt Lobos No 575 filed in your Office.

I have important testimony to adduce which cannot be taken except by procuring the genuine title deed for which Reason you will Oblige by complying with this just Request.

I Remain Sir

Your Obedt Serv^t

V. C. Howard

Filed in Office June 14th 1854

Geo. Fisher Secy

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57

8

557. G.D. 12.

No 3

Punta de
Gobos.

Fac: Smill
of a Certificate

394 ND

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8

Here for the map

56 2. G. D. R

@ No. 4

Territory of California, District of Don Juan
Escob. Chief Magistrate's Office.

Verba Buena Oct 6th 1846.

This to certify that Thomas
Q. Larkin Esq^r for himself and as the
Representative of Don Benito Diaz has
presented at this Office the title to the farm
called punta de lobos, on San Francisco
Bay as described in said title or sent
to the said Don Benito Diaz and transfer
from said Diaz to the said Thomas Q.
Larkin Esq^r. He the said Thomas Q.
Larkin claims ownership of said farm
and asks possession thereof, with permission
to survey and occupy the land as des-
cribed in the title, at the earliest prac-
ticable moment. This is therefore to Order
that in accordance with the aforesaid
Thomas Q. Larkin Esq^r can enter upon
said premises and be held to be and
considered in legal possession thereof ac-
cording to the terms and conditions of the
Original grant the boundaries whereof
to be fixed as soon as a competent Sur-
veyor can be obtained to survey the same
Signed Wm. A. Barrett Chief
Magistrate

The undersigned do hereby Certify that
the foregoing documents marked Nos. 1 &
2 are faithful translations of those marked
Nos. 3 & 4 true copies of their Respective
Originals.

Monterey 19th August 1846

Signed J. W. C. P. Harwell
Govt. Interpreter.

State Dept. of the Territory of Cal.
Monterey Dec 28th 1846.

I Certify that the foregoing documents
Nos. 1-2-3-4 are true copies.

H. W. Halleck
Br. Capt. & Secy. of State

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57 J. G. D. R. (Note by the O. Gen. The following is endorsed on the other side of the preceding page of the paper from which these copies are made.

J. G. D. R.

The United States troops are in possession of the mesquits & Clew ^{at} the Entrance of the Bay of San Francisco which are claimed by Mr. Tho. - Q. Larkin as his property without making any decision for or against the soundness of Mr. Larkin's title as exhibited by this paper. The possession held by the United will not operate to the prejudice of any just claim to said property held by Mr. Larkin.

Monterey September 3rd 184th

Signed) R. B. Mason

Col. 1. Doak

Gov. of Calif.

Office of the Surveyor General of the United States for California

I, Samuel D. King, Surveyor General of the United States for the State of California and as such now having in my Office and under my custody a portion of the Archives of the former Spanish and Mexican Territory or Departments of Upper California do hereby certify that the three preceding and hereto annexed pages of tracing paper numbered One two and three inclusive and each of which is verified by my initials (S. D. K.) exhibit true and accurate copies of certain papers on file and forming part of the said Archives in this Office.

(Seal) In testimony whereof I have hereto signed my name officially and affixed my private seal (not having a seal of Office) at the City of San Francisco Cal. the 2nd day of July 1852.

Saml. D. King
Surv. Gen. Cal.

5-8

1853.

Filed in Office Jan 1st 1852

Geo. Fisher Secy

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ND

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5-9

18515 Joseph L. Palmer et al. 3
vs
The United States 3

From a place called "Punta de Leobos" containing two square leagues situate in the County of San Francisco.

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Opinion
by
Wm. H. French

This claim is based upon a grant issued by Gov^r Pio Pico dated the 25th day of January 1846 to Benito Lizey and the claimant has offered in evidence the Expediente of the said Lizey and the grant aforesaid and also a deed from the said Lizey to Thomas C. Larkin dated the 19th day of September 1846, but have not offered in evidence any thing to show that the present claimant have any interest in the land whatever either equitable or legal, and the claim will therefore have to be rejected.

Rejected

Filed in Office Aug 14th 1855
Geo. Fisher
Sec

No. 5115. Joseph L. Palmer et al }
vs }
The United States }
}

Decree

In this case after hearing
the proofs and allegations it is
adjudged by the Commission that
the claim of the said Petitioners
is not valid, and it is therefore
decreed that their application
for a confirmation thereof be denied

R. Aug. Thompson

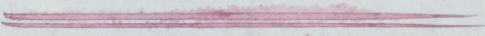
S. B. Farwell

Comr.

Filed in Office Aug 14 '1855'

Geo. Fisher

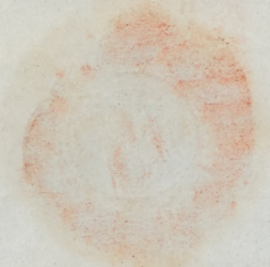
Sec



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Ordered

And it appearing to the satisfaction of this Board that the land hereby adjudicated is situated in the Northern District of California it is hereby Ordered: that two transcripts of the proceedings & of the Decisions in this case & of the papers & evidence upon which the same are founded be made out and duly certified by the Secretary, one of which transcripts shall be filed with the Clerk of the United States District Court for the Northern District of California and the other be transmitted to the Attorney General of the United States.



MD

Office of the Board of Commissioners,

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

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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 *Sixty one* pages, numbered from
1 to *61*, both inclusive, to contain a true, correct and full Tran-
script of the Record of the Proceedings and of the Decision of the
said Board, of the Documentary Evidence and of the Testimony
of the Witnesses, upon which the same is founded, on file in this
Office, in Case No. *575* on the Docket of the said Board,
wherein

Joseph C. Palmer, et al, are
the Claimant against the United States, for the place known by
the name of *"Punta de Lobos"*

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 sixth day of *January*
A. D. *1856*, and of the Independence of the
United States of America the ~~seventy~~ *eighty* ~~with~~.

Geo. Fisher




394

U. S. DISTRICT COURT,

Northern District of California.

No. 394

ND

THE UNITED STATES 394

vs.

Joseph C. Palmer, et al.

TRANSCRIPT OF THE RECORD

FROM THE

BOARD OF U. S. LAND COMMISSIONERS,

In Case No. 375

Filed, *January 30* 1856

J. A. Monroe,
Clerk

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

No 394.

In the United States
of
J. C. Palmer et al

You will please take
notice that in the above case,
decided here by the Circuit Court
to ascertain and settle private land claims in the
State of California against the claimants, and a
transcript of the proceedings in which was filed
in this office January 30th 1856 the appeal in
the District Court of the United States for the
Northern District of California will be prosecuted
by said claimants.

Harvard & Gould
Attys for Claimants.

To the District Attorney
of the United States for
said District.

No 394

one.

Wm. A. ...

J. C. Palmer & als

Notari of ~~...~~
intention v. prosecute apper

Filed July 26, 1856
Chas. ...
Deputy

At a *Stated* Term of the District Court of the
UNITED STATES OF AMERICA, for the Northern District of Cali-
fornia, held at the *Court Room* in the City of SAN
FRANCISCO, on *Monday* the *Thirteenth* day of
April in the year of our Lord one thousand
eight hundred and fifty-*seven*

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Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States
appellees
vs
Joseph C. Palmer et al
Claimants & appellants

Case No. 394 =
for
"Santa de Lobos."

On motion of A. C. Whitcomb
of counsel for claimants, it is hereby ordered by
the Court that the above-entitled cause be
set for trial or hearing on Wednesday May
6th 1857 at the opening of the Court on that day.

No. 394

United States District Court, Northern
District of California.

The United States
Appellees

vs.
Joseph C. Palmer et al
Claimants & Appellants

order fixing time of
trial.

Filed

April 13 - 1857

CLERK.

DEPUTY.

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

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The United States
appellees

Case No. 394 =

Joseph C. Palmer
Bethuel Phelps & others
Claimants & appellants

On appeal from Board of U.S. Land
Commissioners for the State of California
Case No. 515 on its docket.

Claim for Rancho
"Punta de Lobos."

The petition of the said Joseph C. Palmer, Bethuel Phelps & others - Claimants, petitioners & appellants - represents to this Honorable Court that this proceeding is an application by the said Appellants for a review of the decision of the said Board of United States Land Commissioners rejecting the claim of the said Claimants against the United States for the Rancho or tract of land known as "Punta de Lobos" - at the entrance of the Bay of San Francisco - containing two square leagues of land a little more or less in the City & County of San Francisco State of California: the said claim being under a Grant - bearing date June 25th A.D. 1846 - from Pio Pico Governor of the Californias to Benito Diaz, to all of whose rights & interests in the said Rancho "Punta de Lobos" the Claimants & petitioners herein have duly succeeded: for a more particular account whereof, for a description of said lands & premises, and for a deraiqnment of the said Claimants, title a special reference is here made to the petition of the said Claimants filed before the said Board of U.S. Land Commissioners,

and appearing in the Transcript therefrom
filed in this cause in the above-entitled District
Court.

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And your petitioners would represent that
the said Board of U.S. Land Commissioners
on the 14th day of August A.D. 1835 delivered
its opinion & decision rejecting the said claim:
And that afterwards, to wit: on the 20th day of
January A.D. 1836 a Transcript of the proceed-
ings & decision of the said Board of U.S. Land
Commissioners, and of the papers & evidence
on which the same were founded, was filed
according to law with the Clerk of the District
Court of the United States in & for the Northern
District of California, in which said Northern
District the said land & premises here claimed
are situated: and that within six months
thereafter, to wit: on the 26th day of July
A.D. 1836 the said claimant & petitioner filed
according to law a notice with the Clerk
aforesaid, of their intention to prosecute
the appeal taken in this case.

And finally your petitioners would
represent that their claim to the said land
& premises mentioned in their said petition
to the said Board of U.S. Land Commissioners,
and herein before described, is a good & valid
one, and ought to be confirmed.

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

And your petitioners well ever pray,

San Francisco
May 2nd 1857

1
Murphy & Gold

Counsel for Claimants, appellants
& petitioners

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[Faint handwritten notes in the left margin]

[Faint handwritten notes in the center of the page]

[Faint handwritten notes at the bottom of the page]

Due service of a copy of the within Petition for Review
is hereby admitted.

San Francisco May 7th 1857 -

Wm Blanding
Dist Atty

United States District Court
Northern District of California

No. 394 = 3rd

The United States

vs
Joseph C. Palmer
Bethuel Phelps & others
Claimants & appellants

Petition for Review

Filed May 7 1857.
N. A. Chivers,
Deput.

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

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The United States
appellees.

^{or}
Joseph C. Palmer
Benjamin Phelps & other
Claimants & appellants

Case No 394
On appeal
from Board of U.S.
Land Commissioners
for the State of California
Claim for Rancho
"Punta de Lobos"

Then came the United States into
Court and by their attorney deny the validity
of the title set out in the petition of the said
Claimants & appellants, and pray that the
decision of the Board of U.S. Land Commis-
sioners in this cause be affirmed, and that
the said title be deemed to be invalid. —

San Francisco
May 7th 1857

Wm Blarney
Dist Atty

United States District Court
Three
Northern District of California
No. 394 ~

The United States

vs

Joseph C. Palmer
Bethuel Phelps & others
Claimants & Appellants

Answer

Filed May 7, 1857.
W. H. Cheveris,
Deputy.

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Territory of California
District of San Francisco.

Chief Magistrate
Office Yerba Buena
Octr. 6th 1846.

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This is to certify that Thomas
C. Larkin Esqr. for himself
and as the representative of
Don Benito Diaz has presented
at this office the title to
the farm called "Punta de Lobos"
on San Francisco Bay, as described
in said title, granted on the
twenty fifth day of June last,
by which said title or grant
to the said Benito Diaz and
transfer from said Diaz to
the said Thomas C. Larkin
Esqr. - he the said Thomas
C. Larkin, claims ownership
of said farm, and asks
possession thereof, with
permission to survey and
occupy the land (as des-
cribed in the title) at the
earliest practicable moment.
This is therefore to order, that
in accordance with the
aforesaid titles, the afore-
said Thomas C. Larkin Esqr.
can enter upon said prem-
ises and be held to be, and
considered in legal posses-

thereof according to the terms
and conditions of the original
grant the boundaries whereof
to be fixed as soon as a compe-
tent surveyor can be obtained
to survey the same.

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Wm A Bartlett
Chief Magistrate

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

The United States - appellees }
vs } Case No. 394
Joseph C. Palmer } for Rancho
Edward Phelps et al } "Punta de Lobos"
Claimants & appellants }

It is hereby stipulated
and agreed that the above foregoing Certificate and order
in the handwriting & with the signature of Washington
A. Bartlett Chief Magistrate may be used & read in
evidence in & upon the hearing & trial of the above entitled
cause in all its stages without further proof. subject to
all legal exceptions

San Francisco
May 30th 1857

Edward Gould
Attor for claimant.

Wm Blanning
District

Alcides giving
Possession of Piece
de Lotos 1846

District Court
of the United States 12
Northern District of California

No. 394 =

The United States
appellees

^m
Joseph C. Palmer
Benjamin Phelps et al
Claimants & appellants

Certificate, order & Stipulations

Filed June 6th 1857.
W. H. Chevers,
Deputy.

UNITED STATES DISTRICT COURT,
Northern District of California.

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The United States

vs
J. B. Palmer et als

San Francisco,

May 18th 1857

ON this day, before *John B. Williams* by consent of parties
~~Commissioner of the United States for the Northern District of California, duly~~
authorized to administer oaths, &c., &c., came *Juan M. Suco*

a witness produced on behalf of the

Claimants

in Case No. *394*, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. *515* on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows — ~~his evidence being interpreted by~~ *Juan M. Suco*

~~a sworn interpreter~~

PRESENT:

Wm. Handing U. S. Dist Atty & *E. D. Gould*
for Claimants

Answer to QUESTIONS BY Claimants' attorney

My name is Juan M. Luco, my age
38, and my residence Solano County.
I know Vicente Refecto Gomez, I had a
conversation with him respecting the
"Punta de Lobos" case about a month ago,
in this City at the California Hotel. Luis
Arenas, the old man, and his son were
speaking with me, I asked them what
they came here for. They said they
came to give testimony in the "Punta
de Lobos" case, because Gomez had before
testified against the case, and ^{they} said
that Gomez testified the grant was
made in their presence, or before them.
I asked Arenas who owned that grant.
They said they did not know. I asked
them who called them here, They said
Santiago Harbin, who was a friend of
theirs. They said that such a thing
had never been, and in consequence
they had come to give their testimony.
That evening or next day I saw Gomez
at the Hotel and I asked him about
that. ~~If he gave any testimony~~ I told
him in substance what the Arenas
had told me. He said he never did
such a thing. He said every thing had
been charged to him since he gave the
testimony in the Potrero Case, Gomez

said he thought Benito Diaz was the one who had given that testimony. I think that Gomez said that he did not know anything about the Point Lobos Case, but I cannot say this positively. I am positive that he said to me two or three times that he never gave any testimony against the Point Lobos claim.

Cross Ex.

I asked Arenas and myself were talking of the evidence given in the Dist Court. Nothing was said between Gomez and myself about any Court. I asked Gomez if ^{he} had ever given any testimony against the Point Lobos claim. He said he never did. Gomez said "I think Benito Diaz is the one who gave testimony against that grant, & now it is charged to me." I know Gomez. I don't know much about his character for veracity; some talk in his favor, & some against him.

Juan M. Lero

Commissary, and
jurat waived
Wm Blandin
Dist Ct

No. 394 &

U. S. Dist Court.

The United States

vs.

Jos. C. Palmer et als

Deposition of Juan M. Lugo

Filed June 6. 1857.

W. H. Cheves.

Deputy.

UNITED STATES DISTRICT COURT,
Northern District of California.

The United States
vs
So. C. Palmer

San Francisco,

June 5th 1857

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PAGE

ON this day, before *Edgar G. Ames* a
Special Justice appointed by District Court
Commissioner of the United States for the Northern District of California, duly
authorized to administer oaths, &c., &c., came *T. A. Mudge* &
Fredrick Billings a witness, ^{as} produced on behalf of the
Claimants

in Case No. 394, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 575 on the Docket of the said Board of Commissioners, and ^{were} was duly sworn and testified as follows — his evidence being interpreted by

~~a sworn interpreter~~

PRESENT: *Wm Blanding Esq U. S. Dist Atty, and A. C. Whitcomb for Claimants*

QUESTIONS BY *Counsel for Claimants*

Ques What is your name, age and residence?
My name is T. A. Mudge, 32 years old, and I reside in San Francisco.

Ques - Do you know Tho^s. A. Larkin, William M. Stewart, Dexter R. Wright, Elisha Kingsbury and J. C. de la Montagnie. -

Ans. I do.

Ques - Do you know the signatures of those persons?
Ans. I do -

Look upon documents purporting to be an original deed from Thomas O. Larkin and Rachel his wife to Dexter R. Wright, and deed from Dexter R. Wright by his attorney in fact the said Elisha Kingsbury to Bethuel Phelps which are now shown to you

and certified copies of which are hereto annexed
marked "Exhibit A" & "Exhibit B", & state whether
the said signatures ^{appearing thereon} are genuine, and where those
persons are as far as you know ~~that~~ now live.

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Ans. I know those signatures to be those of the
parties; I have often seen them write & sign their
names.

Wm M Stewart is ~~is~~ now a resident of Washington
City.

Messrs de la montaigne & Kingsbury are residents of
this City, but are informed that they are now absent.
Thos O Larkin resides here.

Sworn to & subscribed

this 5th day of June 1857

Frederick Billings

Special Commissioner

J. A. Hodge

~~Frederick A Billings~~

Frederick Billings being duly
sworn - deposes & says, That he knows
Thomas O. Larkin and his wife
Rachel Larkin, Wm M. Stewart,
J. M. Jones and Dexter R. Wright
and that the signatures of those per-
sons on the document now shown
him and a certified copy of which
is now hereto annexed marked
"Exhibit A" are respectively their
genuine signatures, and the said
Thomas O. Larkin and Rachel
Larkin appeared before him
as Commissioners of Deeds and
acknowledged to him that they

executed the same as their own
free act and deed, as by him certifi-
fied in the certificate thereto attach-
ed - That the said ~~Wm~~ Mr. Stewart
resides in the city of Washington,
~~and~~ the said Dexter R. Wright in
the State of Connecticut, and the
said S. M. Jones is now dead.

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~~Sworn to before me~~
~~this 5th day of June~~
~~1857~~
~~at Washington~~
~~D. C.~~

Frederick Pillsbury

Sworn to before ^{me} this
5th day of June 1857
Frederick Pillsbury

Special Commissioner

Thomas O. Larkin & wife

To
Dexter R. Wright.

This Deed made and entered into in the Town of Monterey Territory of California on this thirteenth day of September Anno Domini Eighteen hundred and forty nine by and between Thomas O. Larkin and Rachael his wife parties of the first part and Dexter R. Wright of the Town of San Francisco party of the second part. Witnesseth that the said Thomas O. Larkin and Rachael his wife for and in consideration of the sum of Fifty Thousand Dollars to them in hand paid by the said Dexter R. Wright the receipt whereof is hereby acknowledged and confessed do hereby convey, remise, release and forever quit claim unto the said Dexter R. Wright and to his heirs and assigns forever. All their right, title interest, estate, claim and demand both at law and in equity and as well in possession as in expectancy of in and to all that certain tract or parcel of land situate, lying and being at the entrance of the Bay of San Francisco known by the name of Punta de Lobos the said land containing an area of two square leagues

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PAGE

(dos sitios de ganado mayor) a little more or less and comprehended be, between the lagoon of the high hill and the Punta de Lobos all of which will more particularly and at large appear reference being had to the accompanying instrument marked - A - the same being a true copy of the Grant from Pio Pico Governor of California to Benito Diaz together with the Deed from Benito Diaz to Thomas O. Larkin. To have and to hold the same with all the rights, privileges and appurtenances thereunto belonging or in anywise appertaining unto the said Dexter R. Wright his heirs and assigns to his and their now proper use and behoof forever except One hundred yards square in said tract deeded to S. Ward Pell by deed dated the Fifth day Nov. 1847 on which said square said S. W. Pell now has his place of residence. In Witness Whereof the said Thomas O. Larkin and Rachael his wife in presence of the assisting witnesses have hereunto set their hands and Seals the day and year first aforesaid.

Witness } Thomas O. Larkin
W. M. Stewart } (Seal)
J. M. Jones. } Rachael Larkin
(Seal)

Territory of California }
District of San Francisco }

On this fifth day of November the year
Eighteen hundred and forty nine per-
sonally appeared the said Thomas
O. Larkin and the said Rachel Larkin
the signers and Sealers of the foregoing
Instrument and each acknowledged the
same to be their free act and deed for
the purposes therein mentioned.

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Before me
Frederick Billings
Commissioner of Deeds
in said District.

Recorded in the Alcalde's Office in Book
8 of Deeds pages 152-153 Nov. 7,
1849 at 5 o'clock P.M.

Edgould Buffum
Recording Clerk.

A true Copy of an Original Recorded at
request of B. Phelps May 9, 1857. at
4 1/2 o'clock P.M.

J. D. Kohler,
County Recorder,
per John Ames
Deputy

County of San Francisco
County Records Office

I do hereby certify
that the foregoing is a full, true
and correct Copy of Record deposited

and remaining in this Office as will
appear by reference to Liber 66 of Deeds
page 365.

Witness my hand and Offi-
cial Seal this 13th day
of May A.D. 1857.

J. D. Kohler
County Recorder
per John Ames
Deputy

Deed.

J. O. Larkin & wife

For

Dexter R. Weight

Certified Copy.

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2/2

Dexter R. Wright

To:
Elisha Kingsbury

Know all men by these presents that I Dexter R. Wright of San Francisco State of California have made, constituted and appointed and do by these presents make, constitute and appoint Elisha Kingsbury of said San Francisco my true sufficient and lawful Attorney for me and in my name and on my behalf to ask demand, recover and receive all and any sum or sums of money, debts, dues, merchandize or effects, due, payable, owing or belonging, or which may at any time become payable, owing or belonging unto me from any person or persons whatsoever. To sell all or any part of my goods merchandize and effects which may come to his possession or knowledge on my credit and for my prices as he may deem meet to make and execute any note or notes of hand, bond or bonds or other instruments or contracts in my name and on my account which he may deem meet or expedient to sell, barter, exchange or dispose of any real Estate of which I am now seized or possessed in fee simple or for any less estate to any person or

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persons for any price and in any man-
ner whatsoever and for these purposes
to execute and acknowledge any deed or
deeds or other assurance or assurances with
general covenants or warranty against
all persons or any other covenants whatsoever
as he may deem expedient. To purchase any
real estate in my account in fee simple
or otherwise at any price or exchange what-
soever and for these purposes to receive
empower make and execute any con-
tracts, deeds, conveyances or other instru-
ments whatsoever to settle and adjust
all partnership accounts and demands
and all other accounts and demands
now subsisting or which may hereafter
subsist between me and any other
person or persons whatsoever and to
submit and decide the same by and
to arbitration to compound for any
debts, dues or demands owing or which
may hereafter be owing to me and
to take less than the whole, or other-
wise to agree for the same in such
manner and in such terms as he
in his discretion may deem proper
and for all and any of those purposes
to make and execute and release con-
cessions, compositions, agreements or
contracts by deed or otherwise in his
opinion necessary and expedient in
the premises to pay and discharge
all debts and demands due and
payable from me unto any person or

persons whatsoever to enter into any lands
or other real estate to which I am or may
be entitled and recover the possession thereof
of and damages for any injury done
thereto to commence and prosecute
unto final judgment and execution
any suit or suits, action or actions, real,
personal or mixed which he shall
deem proper for the recovery, possession
or enjoyment of any matter or thing
which is or which may hereafter
be due, payable, owing, belonging, accruing,
owing or appertaining to me for or by
reason of the premises or any part thereof
and in any suit or actions for me
to appear and plead before any Courts
or Tribunal having Jurisdiction thereof
and all stipulations, recognizances and
other requisits in any suits or actions
to allow and establish to determine the
same suits or actions and any questions
arising from the same by arbitration
or otherwise compromise; and of all
receipt and recoveries in the premises
due acquittances and discharges to
execute and deliver and generally
to do and perform all matters and
things transact all business make
execute and acknowledge all con-
tracts, orders, deeds, writings, assen-
sances and instruments which
may be requisite or proper to effect,
warrant all or any of the premises or
any other matter or thing appertaining

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In Testimony Whereof I have hereunto
affixed my Official Seal and subscribed
my name the day and year first
above written.

A. Williams Seal
Notary Public.

The preceding is a true copy of the
Original Recorded at the request of
E. Kingsbury July 9th 1851 at 10^{1/2}
o'c. A. M.

John A. McGlynn
County Recorder

County of San Francisco
County Records Office.

I do hereby certify that
the foregoing is a full true and correct
copy of Record deposited and remaining
in this Office as will appear by refer-
ence to Liber N^o. 1. (One) of Powers
of Attorney page 404.

Witness my hand and Official Seal
this 1st day of May A. D. 1857.

J. D. Kohler
County Recorder
per John Ames
Deputy.

Power of Attorney

Dexter R. Wright

To.

Elisha Kingsbury

Certified Copy

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3 1/2

This Indenture made and entered into this seventeenth day of May A.D. one thousand eight hundred and fifty two.

Between Dexter

D. Wright, of the Town of Meriden State of Connecticut - acting by his attorney in fact.

Elisha Kingsbury of the City and County of San Francisco State of California - party of the first part - and Betruel Phelps of said city and County, party of the second part:

Witnesseth, that the said party of the first part for and in consideration of the sum of Thirty five Thousand Dollars to him in fraud paid by the party of the second part the receipt whereof is hereby acknowledged, hath granted released and quit-claimed, and by these presents, doth grant, release and quit-claim unto the said party of the second part, his heirs and assigns forever, all the right, title and interest of the said party of the first part of, in and to all that certain tract-piece or parcel of land situated, lying and being in said City and County & known and described as the Ranch "Punta de Lobos" containing two square leagues of land, a little more or less at the entrance of the Bay of San Francisco bordering on the Northernly side on the said Bay of San Francisco, and on the Westernly side on the Pacific Ocean, and being the same tract of land granted by Pio Pico Governor of ^{the} California to Benito Diaz by Grant, bearing date the 20th day of June A.D. 1846, and by said Benito Diaz & wife transferred to Thomas O. Larkin by deed bearing date the nineteenth day of September A.D. 1846, and recorded in the office of the County Recorder of the County of San Francisco in Liber 49 of Deeds page 598; to which said Grant with the maps & papers relating thereto now

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forming part of the archives of the Office of the
Surveyor General of the United States for the State
of California, reference is here made for a
further and more particular description
of the said tract of land.

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Together with
all and singular the tenements, heredi-
taments and appurtenances thereunto
belonging or in any wise appertaining, with
the rents, issues and profits thereof, whether
now due and owing or to be come due,

To have and to hold the same
unto the said party of the second part his heirs
and assigns forever.

In witness whereof the said
party of the first part acting by his said attorney
in fact hath hereunto set his hand and seal
the day and year first above written.

Signed sealed & Delivered
in presence of
(Signed) J. Delaunoy

(Signed)

Dexter R. Wright (Seal)
by his Attorney in fact
E. Kingsbury

State of California }
County of San Francisco } ss

On this sixteenth day of May
One thousand Eight Hundred and fifty seven personally
appeared before me a Notary Public in & for the said
County, Elisia Kingsbury personally known to me to
be the same person described in and who executed
by Power of Attorney Recorded in the office of the County
Recorder of the County of San Francisco in Liber Number
One (1) of Powers of Attorney page 404 - the foregoing
conveyance as the attorney in fact of Dexter R. Wright
named in said conveyance as a party thereto, and
therein described as the party executing the same by his
said attorney; and the said Elisia Kingsbury ack-

acknowledged to me that he executed the same freely & voluntarily as & for the act and deed of the said Dexter R. Wright, and for the uses & purposes therein mentioned.

Seal

Witness my hand & official Seal
this 16th day of May A.D. 1857
(Signed)

J. J. Thibault
Notary Public

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State of California) SS
County of San Francisco)

I hereby certify that the foregoing is an exact and true copy of the original deed and acknowledgment.

In Witness Whereof I hereto set my hand and Official Seal this 19th day of May A.D. 1857.

W. J. Lomasney
Notary Public



DEED.

Dexter R. Wright
by atty

To -

Reithuel Phelps:

Certified Copy:

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Dated May 17th 1852 =

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

The United States
appellus.

Case No. 394

Joseph L. Palmer
Belmont Phelps et al
Complainants & Appellants

for Rancho
"Punta de Lobos"

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It is hereby stipulated
and agreed that the foregoing certified
copies of Instruments marked "A" "B" "C"
and attached to the depositions of J. A. Nudge
and Frederick Bellings, this day taken in
the above entitled cause, may stand in the
place of their originals, and be used and
read in evidence in and upon the trial
and hearing of the cause without further
proof.

San Francisco }
June 5th 1857 }

Wm Blunck
Dist Atty.

Harmon Phelps
for Complainants

No 394. 9

U. S. Dist Court

The United States

vs.

Jos. C. Palmer et als

Depositions of J. A. Mudge
& Frederick Billings

Filed June 6th 1857.

W. H. Chivers,

Deputy.

Fourth Seal

Two Rials

Qualified provisionally by the Customs House of the Port of Monterey in the Department of the Californias for the years of 1844 and 1845. -

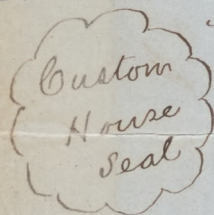
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PAGE

Micheltorena

Pablo de la Guerra



A decorative flourish or signature mark.

A decorative flourish or signature mark.

To His Excellency the Governor

Angels May 24 1845
Pass this for information to the respective Judge and await the report of the Military Commander upon the matter, and upon a review of the whole upon the returns to the Government, it will resolve what may be proper toward the petitioner. -

Pico

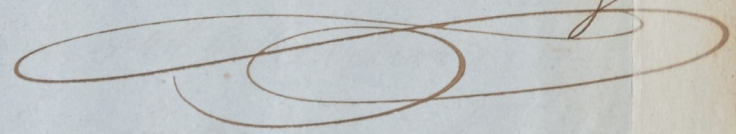
A decorative flourish or signature mark.

Benito Diaz, native of the Californias and resident of San Francisco, before Your Excellency as the most proper authority, and with due respect, here presents; that having many head of horned cattle, and not having a place to put them for the increase of the same, and finding a vacant place within the jurisdiction of San Francisco known by the name of the Punta de Lobos (Wolver Point), bounded on the North by the sea which flows to the Port of San Francisco; on the South with the serro (hill) in the rear of the Mission, known by the name of the Serro de la Laguna Honda (Hill of the deep Laguna); on the East with the

Serra alta (high hill), and on the West
by la punta de lobos (Wolves Point); which
will comprehend two leagues, (dos sitios
de garado mayor) more or less: observing
that the ruins of the Presidio of San Francisco
and the Castle, that are within the tract,
may be exempt from the request, if the
Government is not willing to favor me
with said ruins; I promising if that be
done, to erect a house in the Port of San
Francisco for the military command, which
shall have twenty-five varas length by six
in breadth. —

Therefore I pray that Your Excel-
lency will take into consideration my
petition, granting me the land I solicit,
which I hope of the well known bounty
of Your Excellency, for which you will re-
ceive thanks. Making the necessary
oath &c. &c. Yerba Buena April 3^o 1845

Benito Diaz



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In view of the foregoing superior decree concerning information about the land which the petitioner asks for, I declare that it is vacant, and that said petitioner has the necessary requisites according to the law of the matter; but as to the spot (punto) that the military point actually occupies, I am not able to give any information not knowing its lands.

Pueblo of San Francisco August 16th 1845
D^e la C. Sanchez.

Military Command of San Francisco Oct. 18. 1845

In conformity with the Superior Decree that precedes, issued by His Excellency the Governor Provisional of this Department on the 24th of May of the present year, I declare that finding vacant the land that the petitioner solicits, I think that it may be conceded to him; not comprehending in the grant the two military points of the Castle and Presidio, that are included in the petition. —

Francisco Sanchez.

No 394 =

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

The United States
appellees

vs
Joseph Palmer,
Benjamin Phelps et al,
Claimants & appellants

Translation of Expediente

Filed June 6th 1857,
W. H. Chivers,
Deputy.

UNITED STATES DISTRICT COURT,
Northern District of California.

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The United States

ads

}
}
}

San Francisco, May 15 1857

J. C. Palmer et al.

ON this day, before

Mr B. Williams, by consent of parties
~~Commissioner of the United States for the Northern District of California, duly~~
~~authorized to administer oaths, &c., &c.,~~ came *Jose Leandro*

Luco _____ a witness produced on behalf of the

Claimants _____

in Case No. 394, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 575 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows — his evidence being interpreted by *J. B.*

Cunningham an ~~a sworn~~ interpreter — *jurat waived.*

PRESENT: *Howard & Gould for claimants*
and U. S. Attorney

Answers to QUESTION 5 BY *Mr Gould for clmts.*

My name is Jose Leandro Lucas,
34 years of age, and have resided
in Salano County 5 years. Am a
dealer in stocks. I know Vicente
perfectly Gomez. I heard him speak
of the title to "Punta de Lobos" claimed
in this case, 10 or 12 days ago at
the California Hotel. In a conversa-
tion about land titles generally, and in
particular about the Paterson grant
I asked Gomez if he had ~~given~~
given his evidence in this case, he
said that he had never given any
testimony in this case. That he
knew nothing about the case. I
know Gomez' reputation for truth &
veracity. It is bad in everything
relating to land titles. Would
not believe Gomez on oath in mat-
ters relating to land titles.

Cross Ex &

~~Has had~~ For two or three
years past I would not believe
Gomez on oath. Gomez is not a
witness in my "Alpinas" case, on
either side. I would not believe
Gomez because I once saw Genl
Castro kick him on the plaza. Some

two or three years since, because he had testified falsely in ~~the~~ ^{some} land cases. Would not believe him, also, because I have heard so many people speak against him. I ~~think~~ would believe Gomez on oath on other subjects than land titles. Other people would not believe Gomez, because of the treatment he received from Castro; ~~that~~ he had become a laughing stock from the lies he had told about land cases, and had been detected in. . . . Previous to the time of the conversation concerning the "Punta de Lobos," I did not care to talk with Gomez about land titles, as I had no confidence in what he said. ~~As~~ I was looking at the newspaper one morning about that time, and called Luis Arenas' called my attention to the evidence given by Gomez in the Potrero case. Arenas observed that Gomez' was all lies; that Gomez had also testified in the "Punta de Lobos" case, and that he, Don Luis Arenas, and Cayetano, his son, were present at the making of a false paper in the "Punta de Lobos" case; whereas neither Don Luis nor Cayetano

had ever known Gomez until within a few months past, not even by sight. It was on account of this conversation that I spoke to Gomez about the "Punta de Lobos" title and whether he had given such evidence. Gomez said that he had given his evidence in the Loteros case, but not in the "Punta de Lobos" case. Gomez said that he had never given his evidence respecting the "Punta de Lobos" title. I suppose that Gomez was talking of evidence given in the Dist Court, as the Land Commission had expired.

Que Can you repeat the very words that Gomez used in this conversation?

Ans It is impossible for me to recollect the exact words Gomez used - the substance was this: that he had never given any evidence ~~as to~~ it on the subject of the "Punta de Lobos" title.

Que Were you and Gomez talking at that time as to evidence given in the Dist Court?

Ans Me mere.

Que Is Gomez in the city at present?

Ans No. He left in the last boat for

San Diego, ~~on the 5th of this month~~
about ten days ago. He has gone
to Santa Tomas, Lower Cal. He
went away on charity. The people
at the Calu Hotel made up a
purse for him to pay his expenses.
The owners of the Hotel proposed
to the boarders to help him off on
account of the ^{bad odor he was in from the} testimony which he
had given in land cases.

District resumed.

I understood
Gomez to mean the District Court
in speaking of giving testimony.
Gomez said that he did not give
any testimony before the District
Court in the "Punta de Lobos" case.
He said he had never given his
testimony and knew nothing about
the subject of the "Punta de Lobos" case.

Louie Leonardo Lugo

I waive Commission and
jurat of witness and
interpreter.

Wm Blandin
Dist Atty

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U. S. Dist Court

The United States

vs

J. C. Palmer & Co

Depts of J. L. Lucas
for Claimants

Filed June 6, 1857,

W. H. Chewers,

Deputy.

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UNITED STATES DISTRICT COURT,
Northern District of California.

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The United States
vs
J. P. Le Palmer et als

San Francisco,

May 14th

1857

ON this day, before *J. Edgar Gwynnes* a
Special Commissioner of the United States for the Northern District of California, duly
authorized to administer oaths, &c., &c., came *Bernardino Soto*

a witness produced on behalf of the

Claimants

in Case No. *394*, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. *575* on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows — his evidence being interpreted by *J. Edgar Gwynnes* a sworn interpreter

PRESENT: *W. B. Lansing* U. S. Dist. Attorney & *A. C. Whitecomb*
for Claimants

QUESTIONS BY *Claimants Counsel*

Q. What is your name, age & place of residence?
Ans. - My name is Bernardino Soto, 33 years old, and I reside in Monterey County. —

I have seen the original title of the "Punta de Lobos": — I saw it 2 or 3 days before the taking of Monterey, which was the 7th day of July 1846.

I saw it in the house of Benito Diaz in Monterey. The manner that I saw it was, that Benito Diaz, his family, my father & myself were taking tea at the house of Diaz, when Don Antonio Osio ~~came~~ came in the house with a letter, and handed it to Don Benito Diaz. The letter was sent to him by Elis, and after handing it to Diaz, Osio left and Diaz opened it. Diaz read the contents, and ^{he said} it was the title for "Punta de Lobos", and Diaz appeared to

be much pleased in receiving it.
Two or three days after ^{the tapping of Monterey} I was in the house of Manuel Dutra, with son Gabriel de la Torre, when Mr Diaz came in and asked Dutra to lend him some money. Then Dutra asked him ~~what~~ security he had, when Diaz took out of his pockets a paper, then Dutra gave him money: I do not know the quantity; then Mr. Diaz left; when Mr Diaz left Mr Dutra began to read the paper; he asked me whether I knew the tract of land called "Punta de ~~de~~ Lobos", and I told him that I did know it.

I saw ~~it in 1844~~ the tract of land called "Punta de Lobos" in 1844. - I was living in San Francisco in the latter part of 1844. also in 1845 & 1846. I do not mean to say that I was actually here all that time, for I paid visits to Monterey and other places. Benito Diaz had a little garden in the vicinity of the ruins of the Presidio: I do not know whether it was on that tract of land. Benito Diaz composed a house ~~out~~ to live in out of the ruins of the Presidio and lived in it. - In the early part of 1846 the Presidio and the Castle were in ruins, - There was nobody in charge of the Fort ruins and there were no soldiers there. - ~~In the~~ neither in 1845 nor 1846, did I see any soldiers there or any body in charge. There ~~was~~ ^{were} no limits defined in 1846 (except the ruins) of the "Presidio" and the "Castillo" - Benito Diaz took away wood & tiles from the ruins of the Presidio and the "Castillo" - He was ordered either by the Governor or General of this place to take wood and tiles from those places to build a custom house. I do not mean to say the ~~General~~ General or Governor of this place: I mean the Commandante General who resided in Monterey. - He, also, had permission to take the wood and tiles he wanted, to build himself a house ~~for himself~~

in Yerba Buena - Benito Diaz lived in his house at

in Yerba Buena - Benito Diaz lived in his house at Yerba Buena in 1845 and 1846. - I do not remember the exact date that Benito Diaz lived in his house ^{behind} the Presidio, but I believe that it was in the year 1844. - I do not remember when the house of Diaz was finished in Yerba Buena, but I saw it when it was finished. - I cannot remember if Diaz lived in his house at the Presidio in the early part of 1845. - I am the brother in law of Benito Diaz. -
Cross-examined.

It was Gov Micheltorena who gave Diaz permission to take the wood and tiles he wished to build his house ^{with}. I am not certain if it was in 1844 or 1845. I have a bad memory as to dates.

I was not present when the Governor gave Diaz permission to take wood and tiles. - The way that I know that Diaz had permission to take the wood and tiles is, that my father and myself had charge to carry it here, and I was particular in asking Diaz if he had permission which he said he had. -

I have ~~been~~ ^{been} in the house of Diaz behind the Presidio. The ~~was~~ house was built by Diaz's Indians from the ruins of an old house. I believe that the house was the ruins of a house belonging to the Presidio. I do not know if Diaz had permission from the Governor to live in that house. - Diaz did actually live there. because I saw him living there. - His family lived there also. I do not remember of having seen any one else living there, except Diaz his family, and servants.

I do not exactly remember the time that Diaz lived there.

When I was there I saw no other persons living there except Diaz, his family servants -

I do not remember what year it was that Benito Diaz built the house back of the Presidio -

I have never seen any soldiers either at the "Presidio" or at the "Castillo" -

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The earliest time I remember of the Presidio or the Castillo was in 1844 I think -

There were ~~one~~ ^{several} ~~guns~~ ^{cannons} at the Castillo in 1845 & 1846. They were worthless old guns - Cannons -

These cannons were completely ruined - There were more or less 8 or ten ~~guns~~ ^{cannons} there - Some of them were mounted and some not - I mean to say by limits - that there

were no marks to define the limits ^{exactly} of the Presidio and the Castillo - I do not know the boundaries of "Punta de las Lobos" - I know where the tract of land of "Punta de Lobos" lies - I knew the land in 1844.

The way that I remember ~~that~~ it was 2 or 3 days before the taking of Monterey ^{that} I saw this title is, that I and Diaz were sent from Santa Clara to get provisions and effects to Monterey for the troops - Also, that it was on the 4th of July, which day is a great fast day - I left Santa Clara on the 4th of July in the morning and arrived the same day at Monterey in the evening, and it was either ~~a~~ ^{one} day or two afterwards, that I saw the title - The ~~way~~ ^{reason} that I recollect it so well is, that I was taking tea with Don Benito Diaz's family, when Osio had delivered the letter, and had left, Benito Diaz opened the letter, and took out, and

Puerto Diaz opened the letter, and took out, and

read, the title for 'Punta de Lobos', and I heard it read. It was Celis who sent the letter - I saw ^{the} letter accompanying the title - I mean by a letter that it was an envelope in which the title was enclosed.

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I did not see or hear of any letter from Celis at that time ~~about~~ The title ~~of~~ was signed by Pio Pico and by Matias Moreno. I saw no other signatures. I did not see a seal on it, and did not look to see if ^{there} was a seal or not. It was a formal title - I saw it again ~~at~~ at the house of Manuel Dutra -

I believe that it was the ^{same} paper that I saw in Diaz's house, for it contained the title of "Punta de Lobos." - After Diaz had left the house of Dutra - the latter asked me if I knew where the tract of land of "Punta de Lobos" was situated - and I explained to him where it was situated, ^{close to} near San Francisco. -

This conversation took place ~~either~~ after the taking of Monterey by the Americans either on the 8th, 9th, or 10th of July, 1846. - I only arrived here yesterday evening - I have had no chance to have many conversations; the only thing Diaz asked me last evening was ~~that~~ if I remembered when Osio had delivered him the title - I answered that I did recollect it - Diaz did not tell me the date -

The only thing Diaz asked me was whether I remembered when Osio delivered him the letter - that was all that took place, -

I have not been told about anything of what the other parties ~~have~~ testified in this case.

No 394 6

U. S. Dist Court

United States

vs.
J. C. Palmer et al

Deposition of Bernardino
Soto

Filed June 6th 1857.

W. F. Cheever
Deputy.

UNITED STATES DISTRICT COURT,
Northern District of California.

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The United States
as
J. L. Palmer et al.

San Francisco, May 13th 1857

ON this day, before *J. Edgar Gwynes* a
referee appointed by the said Court
Commissioner of the United States for the Northern District of California, duly
authorized to administer oaths, &c., &c., came *Mmanuel Dutra*

a witness produced on behalf of the

Claimants

in Case No. 394, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 515 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows — his evidence being interpreted by

J. Edgar Gwynes a sworn interpreter

PRESENT: *W. Blandry* U. S. Dist. atty & *H. Whitcomb* for
Claimants

QUESTIONS BY *Counsel for Claimants*

Ques. What is your name, age and residence?

Ans. My name is *Mmanuel Dutra*, 35 years old, and I reside in *Monterey*.

The witness is now shown the original title in this case from Gov. Pio Pico to *Don Benito Diaz* dated June 25th 1846 attached to the deposition of Gov. Pio Pico taken before *G. Thompson Burrill* on the 5th day of July 1854 at Los Angeles, a copy of which said original title and deposition appears on pages 11, 12 & 13 of the transcript in this case and is asked whether he has ever seen.

Question Have you ever seen said original title and if so, when, where and under what circumstances?

Ans. I have seen this title before in *Monterey* in my house; I held it as security on ~~the 11th or 12th~~ the 11th or 12th day of July

1846 - I got ^{it} from Benito Diaz -

Benito Diaz wanted to go to the Lower County and came to me to borrow money on this title - I examined it, thought it was a good one, and I lent him \$40 on it - holding it as security for the money - I held it more than a month - then I returned it to him on the payment of this money, and one bit ~~for~~ on each dollar for the use of the money while he had it, as interest; when Diaz took it back from me he said that he got ^{it} for the purpose of selling it to Tho. O. Larkin. -

Never Examined -

The paper that he gave me was the title of the claim of "Punta de Lobos". It was signed by Pio Pico as Governor, and Matias Moreno, as Secretary. I do not know or remember the first name of Moreno it ^{is} so long a time ago. (The previous sentence was in answer to the question, what was the first name of Moreno?).

I do not remember the date of the title -

I had heard where the "Punta de Lobos" was, but I did not know it personally as I was never here in San Francisco before the year 1850.

After I got the title paper I was talking about it to several persons, and it was then that I heard that the "Punta de Lobos" was in the vicinity of San Francisco. I knew where the "Punta de Lobos" was when I lent the money to Diaz, by reading the description of the land in the title. -

I do not remember the description and limits it so long since. When I lent Diaz the money, he did not sign anything, or putting any thing on the back of the title. In those days we were not accustomed to do those things in small matters - in large ^{matters} ~~matters~~ we had writing. -

When I received this title Don Gabriel de la Torre ^{and} Bernardino Soto were present, and they told me where the "Punta de Lobos" was situated. This was on the 11th or 12th of July 1846 when those gentlemen were present.

I have seen this title the other day. I saw it in

San Francisco - Mr Larkin asked me to come here
to give my testimony in this case - I have not had
any conversation with Benito Diaz about this case ~~within~~
lately - I have not spoken with him ^{lately} about the money
I lent him in 1846 ^{lately}.

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I am positive in saying that I have not spoken to Diaz
about giving my testimony in this case.

I do not know that I have spoken with any persons
about this case - If I have, I do not remember with
whom. I can only fix the date of returning the till paper
to B. Diaz by ~~having~~ its being only 6, 7, or 8 days over a month,
and I charged interest only for a month. I am certain of
the month, being the month of July when I received it,
because it was after the taking of Monterey by the Americans.
It was three or four days after the taking of Monterey
by the Americans, that I lent Diaz the money - Monterey
was taken on the 7th of July 1846. —

It was not my business to lend money ⁱⁿ those times.
I knew Diaz very well and he was poor, and I lent
him that sum.

Sworn to & subscribed
before me May 13th 1857

H. J. G. J. G. J. G.

Special Commissioner

[Signature]

UNITED STATES DISTRICT COURT,
Northern District of California.

The United States }
vs }
Joa. L. Palmer et als }

San Francisco,

May 13th 1857

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ON this day, before *J. Edgar Guymer* a
reference appointed by the District Court
special Commissioner of the United States for the Northern District of California, duly
authorized to administer oaths, &c., &c., came *Gabriel de la Torre*

a witness produced on behalf of the

Claimants

in Case No. 394, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 515, on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows — his evidence being interpreted by

J. Edgar Guymer a sworn interpreter

PRESENT: *W. Blanding* U.S. Dist. atty & *A. C. Whitcomb*
for claimants

QUESTION BY *Council for claimants*

Ques. What is your name age and place of Residence? -

Ans. My name is Gabriel de la Torre, 49 years old;
~~and~~ reside in Monterey.

I have seen the title of 'Punta de Lobos'. I saw it at Monterey a few days after the taking of Monterey by the Americans in the month of July 1846.


I saw the title papers at the house of Don Manuel Dutra. -

I was at the house of Manuel Dutra, in company of Bernardino Soto, talking together, when Mr B. Diaz came in, and ~~told~~ ^{said} Mr Dutra ~~that~~ he wished to speak to him - I retired in a corner, but within hearing of the conversation, when Mr Diaz asked Mr Dutra to lend him ^{some} money, saying that he

was very poor, and wished to go down ~~the~~ County; Diaz, also, said that he had some security. Dutra asked for the security, and Diaz took it out of his pocket, and handed it to Dutra, who began to read it. Dutra ~~exclaimed~~ ^{remarked} that it was the title for the "Punta de Lobos"; that it was a good title, and handed Diaz \$40, with interest of 1 bit on each dollar per month.

One or two days before I ~~went~~ had left San Juan in company with my brother - Joaquin de la Torre - and Ignacio Esquer (I think that it was the latter named person but I am not certain): I heard them talking about a concession which had been given to Benito Diaz called "Punta de Lobos". They were talking together. I asked my brother what it was, and he told me it was a piece of land near San Francisco which had been granted to Benito Diaz. When I arrived at Dutra's house - whilst there, when I heard the conversation ^{between} Diaz & Dutra, I said to myself that is the title for "Punta de Lobos", that my brother and his friend were talking about yesterday: -

I do not remember the exact number of days that I saw the title papers after the taking of Monterey - but it was a very short time after, because I was ~~at~~ hiding myself from the Americans in Dutra's house. I was at that time Captain of Artillery. -

Cross examined. 

When I heard the conversation between Dutra and Diaz I know that Bernardino Soto was present; there might ^{have} been others, but I do not remember. Soto and myself did ^{not} engage in the conversation between Diaz & Dutra. Soto and myself were talking about other matters. I did not see it to read. I saw a paper in the hands of Dutra, which he was reading.

I ~~did~~ ^{took} ~~not~~ see it to read.

The only thing that ^{took} place is that I asked Dutra what he was using, he told me that it was the title for the "Punta de los lobos" near San Francisco.

I did not tell him where the land was situated, ~~to~~ ~~know~~ because I did not ^{know} where the land lies.

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(No cognoscil tenens). I did not hear Soto tell Dutra where that land was situated. I was hidden in Dutra's house about 2 or 3 days. ~~It was~~ I heard of the taking of Montuzy at San Juan, and I left for Montuzy and hid myself in Dutra's house, because I wished to speak to my wife. I know Benito Diaz a long time before. I am certain that it was in the month of July for it was a few days after the 4th of July, which 4th was the feast day of "Refugio" and the Mexicans celebrated it. The Americans celebrated the same day by firing guns, which I heard at San Juan. I never had any conversation with Diaz concerning my giving my testimony in this case. I have had no conversation with any persons concerning the testimony I was to give in this case. I remember these facts well. I never spoke to Dutra about it.

Sworn to & subscribed
before me May 13th 1857

Edyueyimus

Special Commissioner

Gabriel de la Torre

No. 394

5

U. S. Dist Court

The United States

vs

Jos. C. Palmer et als

Depositions of Manuel Dutra
& Gabriel de la Torre

Subscribed June 6th 1857.

W. H. Chivers,
Deputy.

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The United States

^{vs}
J. C. Palmer et al.

San Francisco, May 7th 1857

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ON this day, before *J. Edgar Gyzmes* a
Special referee appointed by the District Court
Commissioner of the United States for the Northern District of California, duly
authorized to administer oaths, &c., &c., came *Benito Diaz*

a witness produced on behalf of the

Claimants

in Case No. 394, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 415 on the Docket of the said Board of Commissioners, and was duly

sworn and testified as follows — his evidence being interpreted by *J. Edgar*

Gyzmes

a sworn interpreter.

PRESENT: *W. B. Lansing* W. S. Dist Atty & *A. C. Whitcomb* for Claimants

Answer to — QUESTIONS BY Claimants' Counsel.

My name is *Benito Diaz* — 43 years old — I reside in *Monterey*.

I am the original grantee to the Rancho "Punta de Lobos".

I know *Juan Bandini*

Look at this document marked Exhibit N^o. 1. J. C. G. attached to this deposition, purporting to be an original letter from said *Bandini* to son *Benito Diaz* and state whether you have ever seen said letter and if so, when, and where, and to what does it relate?

Ans I have seen it before; this is an answer to a letter that I wrote to him when I ask^{sent} for my partition asking for the Rancho "Punta de Lobos".

I believe I received it in ^{the} beginning of June 1845
here in San Francisco. This letter refers to my
application for the Punta de Lobos.

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Ques. - Do you know James C. Crane and John H. Watson who have testified in this case before the
Land Commissioners? If you do, examine their Deposi-
tions on pages ^(24, 25, 26, 27, 28+29) of the transcript in this case,
and state whether or not you have ever had Conversa-
tions with them in reference to the title of the
land claimed in this case, and if so, whether
the statements attributed to you in said depositions
in reference to the said title were made by you? -

Ans. I know James C. Crane and John H. Watson
I have ~~not~~ examined said deposition and answer
that I have had conversations with Crane but never
had any with Watson, (as he does not speak Spanish)
about this title - I never had any conversation with
Watson but once; Jas. C. Crane acted as interpreter:
I never said any thing about the title to either ~~Crane~~
~~Watson~~, ^{Crane}, ^{after} ~~Crane~~ Gomez ^{had made statements}
^{concerning about this title} ~~Crane~~ asked me whether the title was not made
in August - and I laughingly told him, "Yes, Yes,
just as Gomez says!"

I never told Crane that I had written this title
after I left Monterey for Los Angeles, but I told him
that I had written ^{it} before I left Monterey ^{San Francisco} -
I have ~~often~~ had many conversations with Crane;
we were friends - and I always told him that this
was a good title except ^{the time I have spoken of above} ~~that Gomez was~~
^{in conversation with Gomez's statements.} ~~that Gomez was~~
I said the month of August only to
laugh and make fun of Gomez.

Question. Do you know Vicente P. Gomez, and if
so, whether you have had ^{had any conversation} any conversation with him

about this title, and if so, what did he say about it?

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Ans. The only time I had ^{the day} conversation I had with him was ^{one} ~~the day~~ ~~he had given his testimony~~ when I returned from Monterey ~~the~~ ^{to} having heard that he had given his testimony against this claim. I ~~thereupon~~ spoke to him angrily about it, and he denied to me that he had ever given any testimony in this case and said that he had never seen the title and knew nothing about it. —

Ques. Do you now recollect the names of any persons who saw the original title in this case before the 7th of July 1846. if you do, what are they? —

Ans. I remember two persons. one was Bernadino Soto — and the other was Antonio Osio, who was the one who brought me the letter — I mean by letter, the letter containing the original title.

Three or four days after the 7th of July I showed it ^{to} Manuel Dutra and Gabriel de la Torre. ~~It~~ ^{The} way that Dutra saw it was, that, I ~~had~~ ^{had} hypothecated the title with him for money that he lent me to go to the Lower Country, at that time.

Osio is in Lower California — Fulgencio ~~Osio~~ ^{Belis} Belis was the agent to whom I sent the title to Los Angeles to get ~~the~~ it signed by Pio Pico. I believe that Belis is now in Spain.

Ques. Were you ever present with Gov. Pio Pico

Louis & Cayetano Arenas & C. Gomez ~~not~~ after the
1st day of July 1846. when Gov. Pico signed the
title in this Case or in any other Case? —

Ans ~~I never was~~. Gomez was never present when
I was in the presence of Gov Pico. I never was in
the presence of Gov Pico after the 1st July 1845 when
he signed any title papers —

The two letters "S. N." on the back of the Document
marked Exhibit No 1 ~~Elly~~ signifies "Servicio Nacional",
and when so ~~place~~ written on ~~such~~ documents they
are franked and go free. —

Examination adjourned to Saturday the 9th
May at 11 o'clock —

Examination adjourned to Monday the 11th Inst
at 1 o'clock. Monday May 11th 1857

Direct Examination Continued —

Question — Did you ever receive any other letter from
Bardini in relation to the land claimed in this Case,
if so, when written, where is it now?

Ans. I received another letter in relation to this land
at the end of May or beginning of June in 1846
I do not know where it is: I ~~had~~ left it in the Custom
house in this City when the Americans took the place,
and I never knew what became of it — ~~It~~ I was
in charge of the Custom house at that time, as Collec-
tor of Customs. I ~~never~~ remember the substance of
the letter — That as the the Governor and the Com^{ante}mandante

were on bad terms together, that I had better send some
him all the papers concerning the land that I had
petitioned for; so that the Governor might make
the conception of the land in this case.

I know the handwriting and signature of Juan Bandini,
and the two letters were written in his own handwriting
and signed by him.

Ques. When and where did you receive the original title
in this case?

Ans. I received it in Monterey. I am not certain as
to the very day, but it was either the 5th or 6th of July
1846. ~~For~~ I recollect it because I left Santa Clara
for Monterey ~~on~~ the 4th and arrived at the ^{latter} place the same
day. The 4th was a feast day of the Patron Saint of
all California and I received said title either ~~on~~ the 5th
or 6th of July 1846. I received it from my Comrade, Antonio
Maria Osio - to whom it had been delivered for me.

Gomez was in July 1846 a ^{Common} Soldier in my Company.
~~He~~ could not go out of his quarters, because he
had no clothes. I never saw him in the Company of the
Governor.

I ~~did~~ gave a diseno to the Governor accompanying ^{in this case} the Expediente.
A map or diseno, being shown to witness marked "A
S. D. K," attached to the transcript he says, that "it appears
to me to be an exact copy of the original which
I gave to the Governor. I do not know where the origi-
-nal diseno now is."

The diseno was in the same bundle with the other papers

sent-but not attached together. -

When I said that the two letters were written and signed by Juan Bandini, I mean the letter attached to this deposition and the one which ^{was} lost.

Cross-examination -

Juan Bandini was Secretary of the Government when he wrote to me this first letter. When he wrote the second he was only private Secretary to the Governor. I believe, but I am not certain, but that he commenced to be Secretary of the Govt. when Pico was first Governor. I do not remember when he ceased to be Secretary of the Govt. I believe that Jose' M^a Borravibus succeeded him. I ^{think} believe that when Borravibus ~~became~~ succeeded him that ~~then~~ he became Private Secretary. I do not remember the date of the title. I think it is dated on ^{the latter day of} June 1846. - It was signed by the Governor at Santa Barbara. It was written here in San Francisco. I wrote it myself. I sent it myself by a Public Courier. I directed them to Los Angeles, The Courier met the Governor between Santa Buenaventura and Santa Barbara. My agent Celis

I know that fact because my agent Celis told me so when I next saw him.

I know Viscount Gomey well. He was not an intimate friend of mine.

Gomey was ~~in~~ a volunteer soldier in the summer of 1846. In 1844 he was ~~the~~ ^{the} writer in the ~~Commission~~ ^{the} ~~Commission~~ ^{Commissariat} -

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Gomez was never Clerk in the Governor's office - I was not present when the Governor signed the title - I know that Gomez was not present when the Governor signed it, because he was in Santa Clara - I know that he was at that time at the Headquarters of General Castro in Santa Clara. I saw ~~him~~ Gomez there myself either on the 30th of June or 1st of July 1846. He must have been there before that time because he left Monterey with the army - I was myself with the army at that time - I think that Gomez is not a man of veracity. Before he gave his testimony in this Case, I would have believed him on his oath - but since that time I would not believe him - I would not believe ^{him} on his death bed. I only spoke to Gomez once about this title: it was when I heard of his having given his testimony - I never had any ~~had~~ words with Gomez either before, or after, the giving of his testimony (only the time I have spoken of before) ~~as~~ he kilways denied that he had given any ~~such~~ testimony in this case.

I ~~do~~ know Mr James C. Brane well - It is doubtful if he is a man of veracity - I would not believe him on his oath - I ~~do~~ know ~~James~~ John H. Watson - I do not know ^{if} he is a man of veracity - I have no acquaintance with him - I know him by sight I had a conversation once with him thro' an interpreter -

~~Does~~ Gomez, previous to the time of his giving his testimony, was making unfavorable statements against the title to avenge himself against Larkin, because he thought Larkin was a large owner - I never heard his statements, but I was told

of them.

Benito Diaz

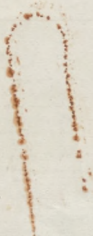
Sworn to & subscribed
before me May 11th 1857

Lagunaynes

Special Commissioner

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Sr D. Quinto Dixon

Arag. y Mayo 24 de 1845.

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Mi estimado amigo.

Vuelvo al la representacion J. Diripio al Gob. para informes de estado y q. V. indico. Cuanto mejor le va de J. sacando antes los certificados o otros informes tambien V. acompañado a su solicitud, esta fuera la hora de J. y tambien la satisfaccion de reunir V. concluido su asunto, espero ya J. no fue asi me prometo el gusto de su recomendacion ala vuelta.

Heun estado Des muy divertidos el dia 21 y es imposible no entregarse cuanto a los placeres. El Gob. toma providencias q. debe abreviarles del cansancio de tales diversiones.

Siempre V. dar mis expresiones a los Sr. de Duff, Henkley, Davis, y demas amigos y V. reciba voluntarios q. le profesa su afecto sinc.

Juan Quintana

S. N.

For D. Benito Diaz. puer.
to S. Francisco.

Del Gob.
Departam. N.

Verba bona.

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Letter from Washington
No. 1
No. 2

Secretary of State
Reports
John R. Rensselaer

Translation of "Exhibit No 1 84" of
of Benito Diaz taken before Judge Hyman at

Los Angeles 24th May 1845

Señor Don Benito Diaz

My esteemed Friend

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Herewith is returned you the petition, which you addressed to the Government, in order to have the Customary Certificates in the manner which you pointed out. How much better it would have been if you had first obtained the certificates or other "informes" (informations), and had sent them with the petition! for I should now have the pleasure of sending to you all your matters concluded. But as it was not so, I promise myself the pleasure of recommending you on its return. You had many diversions on the 11th and it is not necessary to occupy yourselves so much in arrangements: The Government will take measures to relieve you from the tiresomeness of such diversions.

Have the goodness to remember me to Messrs Seidendorff, Kirkley, Davis, and other friends, and receive the good will which is offered you by

Your very affectionate servant—
Juan Bardin

No 394 =

U.S. District Court - Northern District of Cal.

The United States
Appellees

vs

Joseph C. Palmer,

Bethuel Phelps et al,
Claimants & appellants

Translation of Exhibit No. 1 B. G.
attached to the deposition of Benito
Diaz taken before J. Edgar Gyles
Special Commissioner

Filed June 6th 1857.

W. H. Cheever,
Deputy.

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UNITED STATES DISTRICT COURT,
Northern District of California.

attached to the Deposition
Special Commission
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The United States
vs
J. L. Palmer et al

San Francisco, May 11th 1857

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ON this day, before *Flagan Hughes* a
Special *reference appointed by the District Court*
Commissioner of the United States for the Northern District of California, duly
authorized to administer oaths, &c., &c., came *Louis Arenas*

a witness produced on behalf of the
Claimants

in Case No. *394*, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. *575* on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows — his evidence being *in Spanish* interpreted by *by the Commission* — a sworn interpreter

PRESENT: *J. W. Blanding* U.S. Dist Attorney & A.G.
Whitcomb for Claimants

Answers to QUESTION BY Claimant's Counsel
My name is *Louis Arenas*, 41 years old, and I reside in *Santa Buenaventura, Santa Barbara County* —

When *Sonoma* was taken by *Pomon's* men — ~~is~~ — when the *beam* flag was raised — I was in *San Jose*, and some the day I heard of it I started for *Los Angeles* where I remained before and after it was taken. It took me 8 to 10 days to go down to *Los Angeles* — I know *Viceroy P. Gomez* —

The witness is now shown the deposition of *V. P. Gomez* taken in this case before *Com. Sawell* on the 17th day of *May* 1853 and appearing on pages 49 & 50 in the transcript in this case — and says:
I was never present with *Gov. Pio Pico, Benito Diaz,*

the said D. P. Gomez and Cayetano Arenas, as stated by said Gomez in his deposition.

I never was present with Gomez with Gov Pio Pico at all. I never saw ^{the} title of "Punta de Lobos", and do not know where the land lies.

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I never saw ^{Pio Pico} him sign any titles after the taking of Sonoma - I never saw him sign any thing, except papers about my own business - I never saw him sign any papers about other persons business.

It is not true ~~and~~ that I was present when Gov Pio Pico signed the title for "Punta de Los Lobos" - I do not know any thing about it.

Cross-examination

I do not remember the day or month when I reached Los Angeles, but I was there when the Americans took it. -

I do not remember the day month or year of the taking of Sonoma.

I never saw him ^{Pio Pico} sign any titles except for himself myself. I went to the Governor's ~~very~~ seldom except when I had business with him. I do not remember of having seen Gomez ever in the office of the Governor.

I have seen Benito Diaz in the Governor's office. - Governor Pio Pico sold me and two others the garden orchard of the mission of Santa Clara. -

Subscribed before me

May 11th 1857.

J. G. Aguirre

J. G. Aguirre
Special Commissioner

UNITED STATES DISTRICT COURT,

Northern District of California.

The United States

vs
Do. C. Palma et als

San Francisco,

May 12th 1857

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ON this day, before *J. Edgar Gwynes* a
Special *justice appointed by the said court*
Commissioner of the United States for the Northern District of California, duly
authorized to administer oaths, &c., &c., came *Cayetano Arenas*

a witness produced on behalf of the

Claimants

in Case No. 394, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 575 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows — his evidence being interpreted by *J. Edgar*

Gwynes

a sworn interpreter

PRESENT: *W. Blanding* U.S. Dist Atty & *A. C. Whit-*
comb for Claimants

Answers to QUESTIONS BY Claimants' Counsel.

My name is Cayetano Arenas, 32 years old, reside in ~~Santa~~ Buena Ventura, Santa Barbara County.

I lived in Los Angeles in the months of July and August 1846.

I was employed as a clerk in the Government office in July 1846.

I know V. P. Gomez - I did not know him in the year 1846. I first knew him a year or two ago.

The witness is now shown the deposition of V. P. Gomez taken in this case before Commr. *Harwell* on the 17th day of May, ¹⁸⁵⁵ appearing on pages 498, 50 on the transcript in this case - and says: "I was never present with Governor Pio Pico, Benito

Diaz, the said V. G. Gomez and Luis Arenas (who is my father), as stated by said Gomez in his deposition."

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I never was present with Gomez with Gov. Pio Pico at all. I never saw the title papers of "Punta de Lobos." I do not even know where the land lies. I never saw the Gov.:- Pio Pico-sign any title papers after the taking of Monterey on the 7th of July 1846.

It is not true, that I was present when Gov. Pio Pico signed the title for "Punta de Lobos."

I know nothing of the title of "Punta de Lobos," except that I have heard that the land was granted to Don Benito Diaz. I have never seen the title.

I ~~know~~ ^{know} Jas. C. Crane. He is an American, who speaks the Spanish language, about 45 to 50 years old.

About two years ago I was working on my ranch at San Benaventura when Mr James C. Crane came up to me, and after the usual salutations, I inquired what br^t him down there. He said that he came to buy pears to bring them up to San Francisco. I answered it is queer you should come without a wagon to transport the pears. I then told him he had come too late, for all the Pears had been disposed of. He then asked me whether I would not like to take "trips to San Francisco, and to give my testimony against the titles of "San Mateo" and "Punta de Lobos." I told him "no," I did ^{not} care about going, as I knew the title of "San Mateo" to be a good title, and that I knew nothing of the title of Point Lobos. He then said that I could make 5,000 to 6,000 dollars by going up there to testify against the claims, and said that if I did not have money to defray my expenses, that there was \$200 which he offered me then.

He then told me that I was a fool to work so hard

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like a "Jack ass" (barro), when I could come up to San Francisco and make that sum; and besides, that the squatters would give me their protection. —

I had another conversation with Crane about 2 months ago. He told me that he wished me to come before the District Court and testify as to the validity of this claim. He offered to give me \$50 which I refused. I then told him it was ^{strange} ~~quaint~~ that 2 years ago he had offered me money to testify against it, and that he wished I should do now the reverse. I refused to have any thing to do with it. He also told me that he was satisfied that it was a good title, and he did not see how Gomey had testified against it.

I had a conversation with Gomey two or three weeks ago. I asked him how was it possible that he could have testified that I was present when the Governor signed the title in this case. I told him I was a poor man, and he knew it, and that I came up here to refute that testimony. He then said that he had never in all his life given such testimony. I ~~also~~ told him that he was the cause of my being compelled to leave my work and come up here to testify. Gomey told me that he knew nothing of the title of the Puntade Lobos

Cross-examined

Mr James Harbin begged me to come up here to give my testimony.

I received nothing to come up here to give my testimony - I am under many obligations to Mr Harbin, so much so, that if he was to ask me to go to the United States, I should go. I paid my own expenses, but I do not know whether Mr Harbin will pay them or not afterwards -

The obligations which I am under to Mr Harbin are, that he has always ^{helped} ~~helped~~ me: He has worked for ^{me} and never demanded pay: My father was sick in Sacramento City, he did all he could for him; and these are obligations that I never forget.

I do not know what interest Mr Harbin has in this case. He wrote me a letter to come ^{up} here and I came. I have not this letter with me: I left it I think in San Buenaventura.

I remember only of having given my testimony before the Land Commission in the cases of "San Mateo" & Mission Dolores - I may have given another.

I ~~do~~ have given my testimony ~~one~~ in the District Court of Los Angeles - I testified here in the ^{orchard of} ~~Quinta de~~ Santa Clara; in a piece of land called 'Cochá', which Pratta was claimant of: "Alpines" of which Suco was claimant: I testified in favor of the claimants -

I testified to certain things which I knew to be so.

About the title of the Mission Dolores, I am certain that it is genuine - The title of "San Mateo" is genuine for I wrote it. - About Alpines I saw said a title signed by

Covarrubias, but I cannot swear as to the signature of Pio Pico, for I did not see him sign it.

I met Lugo and he asked me whether I knew the title of Vulpinos - I told him I thought so. I went up and saw the title - I knew it and then Lugo said he wished me to testify as to its genuineness.

Howard got me himself to come up and testify in the "San Mateo" claim - I was the grantee in said Rancho, I sold it to Howard.

I do not require money to testify in cases, whether in true cases or in false ones.

Don Alberto ~~Pacheco~~ Packard asked me to testify in this case of the Mission Solos.

When I had the conversation with Mr Crane, I met him in a street. I do not know the name of the street. I met him in March this year. Crane was the one who spoke first. Crane told me that if I would testify in this case, he would give me \$50. He said that it was ~~very~~ ^{strange} that Gomey had testified against this claim. - That the title was good. - I refused to testify: then Crane told me he "could not catch me this time, but he would one of these days." - I had previously told him I knew nothing about the title. - I refused to testify because I knew that Crane hated me, and wanted to catch me. "I can't catch you now, but I will another time", he said. I know in my own conscience that he wanted me

to testify against the claim, but he asked me
to testify in its favor.

I know ~~by~~ ^{in my} conscience that he wanted me to testify
against this claim, for he tried to have ^{me} do the same
in the "San Mateo" claim, saying that the squatters
would protect me.

I would not believe him under his oath. I would
believe Gomez's oath much less, because he said a
lie in this case. I would believe Benito
Diaz on his oath. - His character for veracity is good

I know him ^{well}, but not ~~very~~ intimately; Benito
Diaz did not ask me to come here & testify in this
case. - Personally he did not tell me anything about
this case. - He never spoke to me about this case. -

I do not know how Crane came to speak to me about
it. - I am pretty certain that Crane came down
to my ranch to get me to testify, because he offered
me money on the spot. -

Sworn to & subscribed }
May 12th 1857 before me }

Raquel Pymez

Special Commissioner

~~Examination adjourned to Wednesday 15th
May 1857 at 2 o'clock P. M.~~

No 394

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U. S. Dist Court.

United States

vs.

Jos. C. Palmer et als

Depositions of Benito Diaz
Luis Arenas & Cayetano Arenas

Took June 6. 1857.

W. H. Chenevix,

Deputy.

138 To 141 Inclusive.

SELLO CUARTO DOS REALES

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,



Excmo. Sr. Gobernador

Ang. Mayo 24 de 1845.
Pase a informe del juez respectivo, y se espere q. el Sr. Comandante Militar diga lo q. tenga por conveniente p. a. q. en vista de todo, vuelva q. sea al gob.º este resuelto lo q. con venga a la parte q. solicita.

P. J. Pío

A. V. E.

Benito Diaz natural de Californias y vecino de S. Fran.º ante V. E. como mejor haya lugar, y con el debido respeto hace presente: que teniendo algunas cabezas de ganado mayor, y no teniendo un sitio, donde ponerlas para su aumento; y hallandose valido un paraje en la jurisdiccion de S. Francisco, con el nombre de la junta de lobos, colindante al Norte con el mar que corre al puerto de S. Fran.º al Sur con el Serro que esta a la espalda de la mission de S. Fran.º conuido con el nombre del Serro de la laguna honda, al oriente con la loma alta, y al poniente con la punta de lobos, que comprenda juco mas o menos dos sitios de ganado mayor advirtiendo que las ruinas del Presidio de S. Francisco, y el Castillo que se hayan dentro del sitio quedaran esentos de la peticion a no sea que el Gobierno quiera agraciarme con dichas ruinas, comprometiendome si se efectua a fabricar una casa en el Puerto de S. Fran.º para Comandancia militar que tenga veinte y cinco varas de largo y seis de ancho

Por Fauto.

Suplico tome en consideracion mi solicitud concediendome el terreno que peticione, lo que espero de la acortada bondad de V. E. en lo que merezco gracia. jurando lo necesario &c. &c.

Yerba buena Abril 3 de 1845

Benito Diaz

En

M. del Superior decreto que Antea
de sobre informacion del terreno que el
Sotientante pretende. dice que se halla baldio
y q. otro Sotientante obtiene los requisitos
los necesarios conforme la ley de la mate-
ria. pero que el punto que actual-
mente ocupa el punto Sotientante no
puede dar una informacion por no
saber su estado

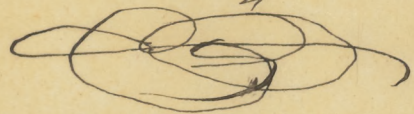
Pueblo de S. Fran^{co} Agosto 16 de
1845

J. De la C. Sanchez

Comandancia Alta de San Fran.^{co}
Oct. 6 de 1845.

De conformidad con el Sup.^o Decreto y
q. antecedido, expedido por el C. Sor. Gobernador In-
terino de este Departam^{to} en 24 de Mayo del pre-
sente año debe decir q. habiendose valido el ter-
reno q. el interesado solicita. caso se le puede
conceder no comprendiendo, ni comprendiendo
en la concesion los dos puntos mitreros
del Precidio, y Castillo q. se hallan compren-
didos en la Sotientad

Fran.^{co} Sanchez



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

I, JOHN C. HAYS, Surveyor General of the United States for the State of California, and as such, having in my office and in my charge and custody a portion of the Archives of the former Spanish and Mexican Territory or Department of Upper California, by virtue of the power vested in me by law, Do Hereby Certify, that the two — preceding, and hereunto annexed page of tracing paper numbered from one to two — inclusive, exhibit a true and accurate copy of a certain document now on file and forming part of the said archives in this office.

In Testimony Whereof, I have hereunto signed my name officially and caused my Seal of Office to be affixed, at the City of San Francisco, this *twelfth* day of *May* 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 394 = 10

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

The United States
vs Appellees

Joseph C. Palmer,
Bethuel Phelps et al
Claimants & Appellants

Expediente

Filed June 6th 1857,
W. H. Cheever
Deputy.

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At a *Stated* Term of the District Court of the UNITED STATES OF AMERICA, for the Northern District of California, held at the *Court Room* in the City of SAN FRANCISCO, on *Monday* the *Fifteenth* day of *June* in the year of our Lord one thousand eight hundred and fifty-*seven*

Present:

The Honorable OGDEN HOFFMAN, District Judge.

| | |
|--|--|
| <p>The United States
appellees
vs.
Joseph C. Palmer et al
Claimants & appellants</p> | <p>Case No. 394 =
for
"Santa de Lobos"</p> |
|--|--|

On motion of William Rauding Esq - United States District Attorney - the Claimants' Counsel appearing - it is hereby ordered by the Court that the said District Attorney be granted six weeks further time in the above-entitled cause to take proofs therein.

No. 394 — 13

United States District Court, Northern
District of California.

The United States
appellees

vs.

Joseph C. Palmer et al
Claimants & appellants

order granting Dist Atty
further time.

Filed

June 15 1857

John A. Monroe
CLERK.

DEPUTY.

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H. J. appellees

vs

J. C. Palmer et als
appellants

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394
ND

~~Office~~

A motion is made to set
this case for a hearing at
an early day which is opposed
by the Dist. Atty -

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The Transcript was filed in
this Court on the 30 Jan. 1856
The cause was placed on
the calendar but was not
reached until April 13. 1857,
when it was set for a hear-
ing on the 6th May ensuing
On the 6th May the Court
was not in session - and
the rule requiring the examina-
tion on Court of witnesses in
cases where fraud was alleged
having been suspended the
positions were taken on
various days up to May 15th
when the claimant ^{Atty} gave notice
to the Dist. Atty of his
readiness to submit the case

2

On Monday May 18th
the District Attorney obtained
from the Court ~~two~~ ^{one} week's
further time to take testimony

On Monday the 25th
May the Dist. Atty desiring
a further postponement
of the cause, a week's
time was granted by
the Court

On Monday June 1st the
Claimant's Counsel moved
the hearing of the cause
but having from a mis
conception of the practice
omitted to prove certain
conveyances before ^{the} ~~a~~ ^{completing} ~~the~~
the originals duly acknowl
edged were produced in
Court the cause was a
gain at the instance of
the Dist Atty postponed
for two weeks -

The issues conveyed according
see passed before the

On the 15th June the Claimant's
Counsel again moved the hearing
of the cause - This motion

was opposed by the Dist. Atty. - No affidavit however was presented by him nor statement of any testimony he expected to procure - No names of witnesses were given - but the importance of the case was referred to and the hope expressed that some testimony ~~may~~ ^{might} be obtained in the course of a few weeks -

The Court desirous of affording every facility for the ~~discovery~~ ^{ascertainment} of the real merits ^{of the case}, again postponed the cause, and as the Judge was about to be absent from ^{the city} 6 weeks was allowed and the cause fixed for July 27th - On the 27th July ^{the hearing} ^{was} again moved, ^{by the Claimants Counsel} as for the postponement was asked by the Dist. Atty. - On being ^{asked} ^{inquired} of by the Court

pending in this Court
~~now~~ or within the last
 two years —

It will not be disputed
 that the intention of Congress
 was in accordance with
 the obvious policy and to re-
 cure the speedy settlement
 of land claims in this state.

It was accordingly provided
 by § 9 of the act of 1851

that after the service of
 the answer to the petition
 for a review of the decision
 of the Board, the cause
 should stand for trial at
 the next term of the Court
 thereafter unless on cause
 shown the same should
 be continued by the Court.

I think ~~it~~ the claimants
 have under the circumstances
 of this case ~~the~~ ^{an} unquestionable
 right to have the case
 heard and disposed of —
 I shall therefore set it for

5- hearing on Monday next
the 10th day of August ^{with liberty given to the Dist. Atty.} ~~with~~
to show or before that day
Cause ~~is~~ for a Continuance
by ~~shown~~ by ~~the~~ District
Attorney according to the
rules of this Court by affidavit
stating the facts intended
to be proved, the names
of the witnesses, the time
within which they can be
produced and the reasons
for their not having been
heretofore examined -

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I am aware that in suffering
the cause to be again postponed
even on the showing in ~~indicated~~
ed I may seem to ^{be} allowing
too great indulgence -
But the large number of
these cases which render
it impossible for the District Atty.
to devote his ^{exclusive} attention to any
one - the difficulty of procuring
information as to the facts,
the importance of this particular
case, & the circumstances that

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he declined to specify any time at which he would be ready to ^{the case} submit, but intimated that he required a delay of some months. He did not give the Court to understand that he was in possession of any facts susceptible of proof, or that he knew of any witnesses by whom the case on the part of the U. S. could be made out. He contended however that the cause had lost its place on the calendar and should be postponed until regularly called in its order - and he expressed the hope that by that time he would be able to procure some testimony on the part of the Govt. No evidence either oral or documentary has been taken or filed since the ~~case~~ on the part of the U. S. since the cause has been

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6

The Law officer of the Govt
has but usually referred
upon his office

All these considerations
have induced me to give
to that office all the ^{above of these cases} oppor-
tunities for the preparation
which without ~~actually~~ ^{disre-}garding
the rights of the claimants
I can extend to him —

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394
S. C. Brewer

vs
The U. S. —

Opinion on motion
to set aside former
verdict

Aug. 4th 1857

Filed Aug 4th 1857
J. A. Munroe
CLK.

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At a *Stated* Term of the District Court of the UNITED STATES OF AMERICA, for the Northern District of California, held at the *Court Room* in the City of SAN FRANCISCO, on *Tuesday* the ~~*fourth*~~ *fourth* day of *August* in the year of our Lord one thousand eight hundred and fifty ~~*seven*~~ *seven*.

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States
Appellees
^{vs}
Joseph C. Palmer et al
Claimants & Appellants

Case No 394-

On motion of A. C. Whitcomb of Counsel for claimants it is hereby ordered by the Court that the above entitled cause be set for a hearing on Monday next August 10th 1857 at the opening of the Court on that day, unless the appellees on or before that then show cause for a continuance, by affidavits stating ^{materiality of} the facts intended to be proved, the names of the witnesses, the time within which they can be produced and the reasons for their not having heretofore been examined.

Ogden Hoffman
U. S. Dist Judge

No 394 = 15

United States District Court, Northern
District of California.

The United States
Appellee

vs.

Joseph B. Palmer et al
Claimants & Appellants

Order fixing time
of trial.

Filed August 4th 1857

John A. Burrows,

CLERK.

by W. D. Cheney

DEPUTY.

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At a *Special* Term of the District Court of the UNITED STATES OF AMERICA, for the Northern District of California, held at the *Court Room* in the City of SAN FRANCISCO, on *Monday* the *Tenth* day of *August* in the year of our Lord one thousand eight hundred and fifty-*Seven*

Present:

The Honorable OGDEN HOFFMAN, District Judge.

| | |
|---|---|
| <p>The United States
Appellees</p> <p>^{vs}
Joseph L. Palmer et al
Claimants & Appellants</p> | <p>Case No. 394-
for
"Puerta de Lobos."</p> |
|---|---|

On motion of P. Jella Torre Esq. United States District Attorney - the Claimants Counsel opposing - it is hereby ordered by the Court that four weeks further time in the above entitled cause be granted to the said District Attorney, and that the cause be set for a hearing on Monday September 7th 1857 at the opening of the Court on that day. —

No. 394 - 16

United States District Court, Northern
District of California.

The United States
Appellees

vs.

Joseph C. Palmer et al
Claimants & Appellants

Order granting Dist. Att.
further time, & fixing time
of trial.

Filed August 10 - 1857

CLERK.

DEPUTY.

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At a *Special* Term of the District Court of the UNITED STATES OF AMERICA, for the Northern District of California, held at the *Court Room* in the City of SAN FRANCISCO, on *Monday* the *fourteenth* day of *September* in the year of our Lord one thousand eight hundred and fifty-*Seven*:-

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Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States
appellees
vs
Joseph C. Palmer et al
Claimants & appellants

Case No. 394 =
for
"Punta de Lobos."

On this day it was moved by A. C. Whitcomb of Counsel for claimants, that the above entitled cause be brought on for a hearing, and the motion having been opposed & argued by the United States District Attorney, it was taken under advisement by the Court. —

United States District Court, Northern
District of California.

The United States
appellees

vs.

Joseph C. Palmer et al
claimants & appellants

Filed

Sept 14 -

1857

CLERK.

DEPUTY.

394 ND

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Cammy

85.

The United States
ads
L. C. Palmer et al }

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Since the delivery of the opinion of the Court on the motion made by the Counsel for Clts ^{August 3rd} that the cause be brought to a hearing the District Attorney showed cause on the 10th day of August for a continuance - The showing tho' not strictly within the rules usually applied to such cases was treated by the Court as sufficient and a few weeks for the time the period asked for by the District Attorney was allowed. Monday Sept 7th being a holiday the Court was not in session and the on last Monday Sept 14th the claimants Counsel again moved the hearing of the cause - No cause for a continuance was shown by the District Attorney - He did not intimate that he expected

2

within any assigned period to obtain testimony on the part of Government nor that he was in possession of any facts susceptible of proof which might affect the case — He ^{however} ~~in~~ gaily pressed upon the attention of the Court that he was in daily attendance upon the Circuit Court now in session and desired that this cause should be postponed until the next regular call of the docket of land cases — ~~Another~~ Court He further urged that the law did not contemplate that sessions both the Circuit & District Courts should be in session at the same time and that ~~he~~ ~~it~~ ~~was~~ ~~impossible~~ for him to attend both Courts at once — the Govt could not be expected to provide two officers to be in attendance upon the Courts when their holding their sessions at the same time was not contemplated by law.

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As to these suggestions it is to be observed that the act of 1855 which authorizes the Circuit Judge to form part of & preside over the District Court when hearing Land Cases expressly requires him to do only "when in his opinion the business of his own Court will permit" clearly implying that the Legislature contemplated that both Courts might be in session simultaneously. And in the fee-bill of 1853 the Marshall is in terms allowed a pro deicio for attending the Circuit & District ^{Courts} when they are both in session or for attending either of said Courts when but one is in session. It cannot therefore be said that simultaneous sessions of both Courts are not contemplated by law.

But the exercise of the discretion of the Court as to the continuing this Cause does not depend upon technical considerations such as this. The Court has already intimated to the District Attorney

that it would suspend ~~hearing~~
 for the present while his engage-
 ments continued imperative the
 regular call of the docket of
 Land Cases — This tho' a great
 hardship to Claimants seemed
 unavoidable — as they could
 not reasonably expect the
 District Attorney to prepare
 for hearing a certain number
 of new cases, when his duties
 in the Circuit engrossed his
 whole time —

But in the case at Bar ^{the}
 has already ^{regularly called and has been} seen ^{set for a hear-}
 ing ^{at} ^{from May 6th} ^{different} ^{times} —
 On the 15th June 6 weeks further
 time was allowed to the Dis-
 trict Attorney — At the expiration
 of that period he was again
 allowed four weeks further
 time tho' the application was
 strenuously opposed by the
 Claimants — and now without
 any showing other than that he
 is engaged in the Circuit Court
 an indefinite postponement is
 asked until the next call of the

calendar — This postponement
 is not asked because the Dis-
 trict Attorney is unable to ap-
 pear and argue the cause
 in Court — For no desire to ar-
 gue the cause orally was
 intimated and the general
 practice has been to submit
 these cases on written briefs —
 If however an oral argument ^{be desired}
 the Court will assign a day
 when the District Attorney is
 not in actual attendance
 on the Circuit Court — A con-
 venient time for filing briefs
 will of course be allowed —
 The real object of the motion
 is to postpone the submission
 and to keep it open for further
 proof — We think the claimants
 have a right to insist that
 their cause be heard — Espe-
 cially as no testimony whatever
 on the part of the U. S. has
 been taken since the cause
 has been in this Court &
 there seems no reason that
 at the expiration of a month

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from this date the Government will be more ready to submit the case than it was a month ago—

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So many cases are already before this Court for determination ~~cases involving~~ ~~protrous~~ requiring minute and careful investigation that it is not probable that this cause will be taken up by the Court and finally disposed before the expiration of a considerable time—

If at any time before the entry of the final decree, ~~then~~ new matter should be brought to light or testimony be newly discovered it will of course be in the power of the Dist Atty to ~~move~~ ^{move} that the cause be reopened for the purpose of hearing it—

The Court has felt the utmost reluctance to force them in refusing this application— we would have much preferred that a cause involving ^{so} such great rights should be heard only when both sides ~~arranged~~

7
themselves in readiness - But
we have felt that the Clai-
nants have rights as well
as the Government and that
under all the circumstances
we are not at liberty to
grant the continuance motion
for

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~~The order must be entered for~~
arguing the cause for a hearing
on ~~Sept~~ -

Therefore the District Attorney should
intimate a desire to argue the
cause orally it must now be
considered as submitted with
liberty to both parties to file
briefs within 2 weeks

~~Sept. 15th 1887~~

The cause must therefore be set
for argument on Saturday ^{Sept. 19th} next
at the opening of Court on that
day and if no oral argument
be desired it will ~~then~~ be consid-
ered as submitted with liberty to
either side to file briefs -

P. C. Parker

adv.

The U. S.

Spina

Sept 16. 1857

Wild Sweet Measles
Chk.

~~Filed Aug 4th 57~~

~~Sweet Measles
Chk.~~

Spina. fishing Co.

Argument

16

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At a *Stated* Term of the District Court of the UNITED STATES OF AMERICA, for the Northern District of California, held at the *Court Room* in the City of SAN FRANCISCO, on *Wednesday* the *Sixteenth* day of *September* in the year of our Lord one thousand eight hundred and fifty-*Seven*:

Present:

The Honorable OGDEN HOFFMAN, District Judge.

| | | |
|---|---|----------------------------|
| The United States
appellor | } | Case No. 394 = |
| <i>vs</i>
Joseph C. Palmer et al.
Claimants & appellants. | | " for
"Junta de Labos." |

The court having taken note this day to advise of the motion made in this cause on the 14th instant, it is now hereby ordered by the Court that the continuance be refused, and that the cause be set down for a hearing on Saturday the 26th of September 1857 at the opening of the Court on that day.

No 394 = 19

United States District Court, Northern
District of California.

The United States
appellees

vs.

Joseph C. Palmer et al
claimants & appellants

Order refusing continuance
& fixing time of trial

Filed Sept 16th 1857

CLERK.

DEPUTY.

394 ND
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At a *Special* Term of the District Court of the UNITED STATES OF AMERICA, for the Northern District of California, held at the *Court Room* in the City of SAN FRANCISCO, on *Saturday* the *Twenty-sixth* day of *September* in the year of our Lord one thousand eight hundred and fifty-*Seven* :

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States
Appellees
by
Joseph C. Salmeron
Claimants & Appellants

Case No. 394-
for
"Monte de Lobos."

The above-entitled cause having been on the 16th day of September 1887, by order of the Court of that date, set for a hearing & trial on this day, and there being present P. Della Torre Esq United States District Atty and William Blanding Esq on the part of the United States, and E. L. Gould Esq and A. C. Whitecomb on the part of the claimants, the hearing of the cause was moved by the Counsel for the claimants in pursuance of said order: but it being suggested to the Court, on behalf of the United States, that the Court had adjourned over until Monday next the 28th instant, the hearing of the said cause was postponed till the said 28th instant, until which day the Court had been adjourned. —

United States District Court, Northern
District of California.

The United States
appellees
vs.
Joseph C. Palmer et al
Claimants, appellants

Order postponing hearing.

Filed

Sept 26

1857

CLERK.

DEPUTY.

394 ND

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At a *Stated* Term of the District Court of the UNITED STATES OF AMERICA, for the Northern District of California, held at the *Court Room* in the City of SAN FRANCISCO, on *Monday* the *twenty-eighth* day of *September* in the year of our Lord one thousand eight hundred and fifty-*Seven*

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Present:

The Honorable OGDEN HOFFMAN, District Judge.

| | | |
|---|---|--|
| The United States
appellees

Joseph C. Palmer et al
^{vs}
Claimants & appellants | } | Case No. 394 =
" <i>San Juan de Los Rios</i> "
" <i>San Juan de Los Rios</i> " |
|---|---|--|

This cause having been brought on for a hearing this day, and argued by the respective Counsel - present for the United States, P. Della Torre Esq. U.S. District Attorney, and William Blandine Esq; and for the Claimants E. L. Gold Esq and A. C. Whitcomb - it is hereby ordered by the Court that this cause be submitted with leave to the said District Attorney, till Saturday October 3rd 1857 - to file briefs.

No. 394 — 21

United States District Court, Northern
District of California.

*The United States
Appellees*

vs.

*Joseph C. Palmer et al,
Plaintiffs & Appellants*

*Order Submitting cause
with leave to Dist Atty
to file briefs.*

Filed *Sept 28th* 1857

CLERK.

DEPUTY.

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At a *Special* Term of the District Court of the UNITED STATES OF AMERICA, for the Northern District of California, held at the *Court Room* in the City of SAN FRANCISCO, on *Saturday* the *Fifth* day of *December* in the year of our Lord one thousand eight hundred and fifty-*seven*

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States appellees }
vs }
Joseph C. Palmer, Charles W. }
Cook, Bethuel Phelps & Dexter }
R. Thught - Claimants & Appellants }
As. 394 in said District Court
and
As. 515 in the Land
Commission

In the above entitled cause on the application of the attorneys for the Claimants made in open Court. It is hereby ordered by the Court that an appeal in behalf of the said Claimants from the final decision & decree of this Court rendered in said cause, on this day and at the present term of the Court, be and the same is hereby granted, and that a certified copy of the pleadings, orders, evidence and depositions in the said cause be sent to the Supreme Court of the United States without delay; and that the Claimants give security in the sum of Two hundred and fifty dollars for costs in the District & Supreme Courts in case the judgment of the said District Court shall be affirmed.

United States District Court, Northern
District of California.

*The United States
Appellees*

*vs.
Joseph C. Palmer
Bethuel Phelps et al
Claimants & Appellants*

Order granting Appeal

Filed *December 5th* 1857

CLERK.

DEPUTY.

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At a Stated Term of the District Court of the
UNITED STATES OF AMERICA, for the Northern District of
California, held at the Court Room, in the City of SAN FRANCISCO,
on *Friday* the *Fourth* day of
December — in the year of our Lord one thousand

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eight hundred and fifty-seven.

Present:

The Honorable OGDEN HOFFMAN, District Judge.

" " *M. Hall McAllister, Circuit Judge*

The United States
appelland

vs

J. C. Palmer, et al.
appellants

D. C. 394; L. C. 575.

Decree.

This cause came on to be heard on appeal from the final decision of the Board of Commissioners to ascertain and settle the private land claims in the State of California under the Act of Congress approved on the 3^d of March A. D. 1857, upon the transcript of the proceedings and decisions of the said Board of Commissioners, and the papers and evidence on which the said decision was founded, and upon the further evidence taken in this Court by leave of the Court; and it appearing to the Court that the said transcript was duly filed according to law; and counsel for the respective parties having been heard, it is by the Court hereby ordered, adjudged and decreed that the said decision be, and the same is in all things, affirmed; and it is likewise ordered, adjudged and decreed that the claim of the Appellants is invalid, and that the same be and is hereby rejected.

Ogden Hoffman
District Judge

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United States District Court, Northern District of
California.

The United States

vs.

J. C. Palmer et al

ORDER.

Decree rejecting claim

Filed *December 5th* 1857

John A. Mowbray CLERK.

By *W. G. G. G. G.* DEPUTY.

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At a Stated Term of the DISTRICT COURT OF THE
UNITED STATES OF AMERICA, for the Northern District of
California, held at the Court Room, in the City of SAN FRANCISCO,
on *Saturday* the *sixth* day of
July in the year of our Lord one thousand
eight hundred and ~~fifty~~ *sixty-one*.

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Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States

J. C. Palmer, et al.

n^o 394

And now at this
day comes Wm. H. Sharp, U. S. Attorney
for the Northern District of California,
and presents the mandate of the
Supreme Court of the United States
in the above entitled cause, whereupon
it is ordered that the said mandate
be filed by the clerk.

Ogden Hoffman
District Judge

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UNITED STATES DISTRICT COURT,
Northern District of California.

The United States

vs.

J. C. Palmer, et al

Order to file mandate.

Filed *July 6th 1861.*

W. A. Chivers,

CLERK.

By

DEPUTY.

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UNITED STATES OF AMERICA, SS.

THE PRESIDENT OF THE UNITED STATES OF AMERICA,

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

greeting:

Whereas, lately, in the District Court of the United States, for the Northern District
of California before you, _____ in a cause

between Joseph C. Palmer, Charles W. Cook, Bethuel
Phelps, & Dexter R. Wright, Claimants and appellants
and the United States, appellees, the decree
of the said District Court was in the fol-
lowing words, viz: -

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74
This cause came on to be heard on
appeal from the final decision of the board of Com-
missioners to ascertain and settle the private land
claims in the State of California, under the act
of Congress, approved on the third of March
A. D. 1857, upon the transcript of the proceedings
and decision of the said board of Commissioners,
and the papers and evidence on which the said
decision was founded, and upon the further evi-
dence taken in this Court by leave of the Court;
and it appearing to the Court that the said
transcript was duly filed according to law,
and counsel for the respective parties having
been heard, it is by the Court hereby ordered, adjudged,
and decreed that the said decision be, and the
same is in all things affirmed; and it is likewise
ordered, adjudged and decreed that the claim
of the appellants is invalid, and that the same
be and is hereby rejected." _____

as by the inspection of the transcript of the record _____
_____ of the said *District*
Court, which was brought into the Supreme Court of the United States, by virtue of *an appeal*
agreeably to the act of Congress, _____
_____ in such case made and provided, fully and at large appears.

And whereas, in the present term of *December*, in the year of our Lord one thousand eight hundred and *fifty* the said cause came on to be heard before the said Supreme Court, on the said transcript of the record, and was argued by counsel: On consideration whereof, *it is now here ordered, adjudged and decreed by this Court that the decree of the said District Court in this cause be and the same is hereby affirmed.*

(Law: J.)

[Faint, illegible handwriting]

[Faint, illegible handwriting]

[Faint, illegible handwriting]

You, therefore, are hereby commanded that such further proceedings be had in said cause, _____

as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding:

Witness the Honorable Roger B. Taney Chief Justice of said Supreme Court, the first Monday of December in the year of our Lord one thousand eight hundred and sixty.

COSTS OF _____
Clerk..... \$ _____
Attorney.... \$ _____
\$ _____

James H. Carroll
Clerk of the Supreme Court of the United States.

394.
No. 5, December Term, 1860.

MANDATE
SUPREME COURT UNITED STATES.

Palmer vs. M. State.

Filed July 6, 1861.
Wm. A. Cheevers,
Clerk.

1
How does it happen that the Senate
in the discussion of the Land Commission Bill
did not allude to the declaration of the
Mexican commissioners that no grants had
been made in Cal: after May 13th 1848?

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They did allude to it.

In the bill reported, there
was a limitation in favor of grants
made before the 7th day of July 1848.
This was stricken out. Why? Because
it would include fraudulent grants
made before that time - of which the
Senate had before them a suspected
list of eight - seven begun & finished
in this interval - 13th May - to 7th July -
and one the great Mc Namarra grant
finished during this time but begun in
1845 -

The argument to strike out was
this - viz - The Senate had stricken
out of the Treaty the 13th day of May
to avoid any implication in favor of
grants made before the 13th of May 1848
and the bill as proposed would undo
that & even extend the implication
to the 7th of July - Therefore, as before
said, the latter date was stricken out.

The Senate then it was argued would
leave all grants as they stand out
the Law of Nations - And they so acted -

Benton's Speech - Long: Globe
(Lauding Cal^{ca} Grant)

The Court have ^{then} to consider whether by the Law of Nations

Grants of public property made, flagrant belles, when conquest has been set on foot and actual occupation is imminent and inevitable, can be made validly against the Conqueror

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Whether, the Court will confirm, grants which the Mex Comrs who negotiated the peace, and were therein representing ~~their~~ Claimant as well as the Government - solemnly - and after special enquiry required by the Mex Comrs - declared not to exist

Whether under the rule of Vattel which says you must search for the intention of a Treaty in the circumstances attending its execution & of the parties to it - This Court can over-look that declaration - and can come to any other conclusion than this - viz - That the Treaty viewed as a stipulation does not include these grants within the understanding of either party - viewed as a declaration of general principles - does not apply

in favor of these grants which
 in the mind of the party declaring
 on the assurance of the party
 benefitted were not in existence

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The suggestion of the Circuit Judge
 as to the Rules of Equity —
 — The principle is directly
 in point whether the title is
 perfect or imperfect — Because
 the present demand — for
 a Patent — a new title paper
 not a new title — is a matter
 of grace and favor with
 the Govt. It is a political
 function committed specially
 in this instance to the Court —
 a power to do a thing which
 was not incumbent as a duty
 but lay altogether within the
 discretion of the Political Dept.

Memorandum on
the subject of
the Declaration
of the Men: Courses

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E Randolph

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Plachy's authorities on the point, that the fixing
 the 7th July 1846 in the 14th sec. of the act of
 3. March 1851, is a legislative recognition of
 the principle that ~~these~~ grants ~~made~~ of the
 public domain in California, made prior
 to the time of the actual conquest & occupation
 of that Department by the American troops, are
 good & valid.

- Appendix Cong. Globe 1850. 1851 - Vol 23
 page 52. Benton's Speech on the pro-
 priety of fixing the 7th July 1846
 as the date of the conquest.
 page 53. contains the section of Gwin's
 Bill to which Benton's remarks
 were addressed.
 page 57. Gwin's answer to Benton.
 " 65. Benton's reply to Gwin.

Cong. Globe 1850. 1851. Vol 23, con-
 tains the argument on the Bill reported
 by the Judiciary Committee. The following
 references are intended to prove, that the
 act of 1851 was not designed to confer any
 new rights or title on claimants, but to pro-
 vide a means by which rights and title de-
 rived from the Mexican Gov^t in California
 might be ascertained and confirmed.
 This object of the Bill was professed & declared
 in reference among other parts of ^{it} the bill,
 to this 14th section of the act 3. March 1851.
 Pages 348. 405. 408. 427. 375. 363. 372. 390.

In the two following cases, the date of the conquest of California was referred to by the Supreme Court.

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In *Cross v. Harrison* 16 How. 190, the Court say, "California or the Port of San Francisco had been conquered in July 1846."

In the *U. S. v. Lathroland* 19 How. 363, the court an objection to the grant was, indefiniteness of boundaries. The respondents in answer relied upon the judicial possession which had been given in September 1846. The Court say "Judicial possession was ^{not} delivered till September 1846, after the establishment of the American authority, which was in ^{that year} - and disregarding said act of possession, ^{for that reason as we must infer} proceed to discuss the ^{objection} on the grant & discuss.

The war between ~~the~~ Mexico and the United States was not waged by the latter with a view to conquest.

We are so assured by the Pres^d U. S.

Pres^d Mess. 1846 & 7. ^{Appendix 6} Cong. Glo. Vol 17 -

p. 7

Pres^d Mess. '47 & '48 in 18 Vol. Con. Glo.

p. 5 & 6.

The President makes the distinction between the war being waged for conquest, and being so waged as to procure indemnity for the losses incurred in ~~the~~ ^{its} prosecution, and to force Mexico to make a treaty of limits and peace.

A large portion of the Mexican Territory occupied by our troops during the war remained with Mexico after the Treaty.

The extension of our boundaries were purchased. Else where is the indemnity which was the declared object of the occupation of the enemy's territory, and why did the U. S. pay Mexico \$35,000,000 and assumed the debts of the latter to the extent of \$3,500,000 besides. The U. S. in fact paid Mexico a great deal more for the ceded territories, than Mr. Stidell was authorized to offer for the same. The whole expenses of the war were considered as repaid

to the U. S. by Mexico, and the former left in debt to the latter \$18,500,000, by the cession of the Territories acquired by the Treaty.

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If the U. S. did not purchase California from ^{new} Mexico, then we have not been indemnified the expenses of the war; and we have moreover made a donation to our enemy of \$18,500,000.

The truth is, ^{and other parts of Mexico} California was occupied by the troops of the U. S. in the pursuance of the aggressive measure deemed necessary by our Govt. to bring the war to a termination and procure indemnity for our losses - that is ~~to say~~ territorial indemnity, the only kind Mexico could make.

During the war it was held by the rights of war; but in making the Treaty we acknowledged that our occupation of it was only temporary; that it was ^{a department} ~~fact~~ the property of Mexico, which ^{Mexico} she had a right to sell, and for the purchase of which we were in Treaty with her. and which finally we did purchase and pay for.

U. S. District Court.

The United States

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ads

no. 394.

J. C. Palmer et als

San Francisco Aug 4, 1857.

Sir:

You are hereby notified that
Jose de la Cruz Sanchez will be examined
in the above case on the part of the
United States, on Monday next, the
10th day of August instant at 11 o'clock
A. M. before J. Edgar Brynes Esq, Special
U. S. Commissioner, at the office of the
Clerk of the U. S. District Court for
the Northern District of California,

Yours R.

P. Sella Torre

U. S. atty

A. C. Whitcomb Esq
Atty for claimants

U. S. District Court

The United States

vs

J. C. Palmer et al

Notice

Service of Copy acknowledged this 4th
August 1857 - without
prejudice to the order of the
Court this day made in the
cause. N. C. Whitecomb
of Counsel for
Claimants.

P. Della Torre
U. S. Atty.

Geno to Diego

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No. 394 ND

US vs J.C. Palmer, et al

This opinion is not complete
Do not number pages or
photograph.

Complete opinion is found in
Hoffman's Reports at page
249

OK. Consulted Mr
Calbreth and he said
to be governed by
above notation.

MCL

4/3-1941

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7.124

Canada

APPENDIX.

No. I.

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

Opinion of Judge Hoffman.

66 UNITED STATES *v.* J. C. PALMER ET AL.

Before proceeding to an examination of the merits of this case, a general objection to the validity of the grant must be considered. The grant purports to have been executed on the 25th June, 1856, subsequently to the declaration of war between the United States and Mexico.

It is contended, on the part of the United States, that on general principles of public law, grants made *flagrante bello* when conquest has been set on foot, and actual occupation is imminent and inevitable, have no validity against the subsequent conqueror. The question has not heretofore been presented to this court. It has been discussed with much ingenuity and ability.

It is urged that in the conduct of war, and the determination of its objects, the political department is supreme; and that the judiciary are bound by the view taken of the war by the political branch of the government; that, although Congress has alone power to declare war, to the Executive is given the right of shaping it to its ends, or of declaring its objects.

To ascertain its objects, resort must, therefore, be had to executive acts, and as the executive acts in this case unequivocally indicate that a principal object of the war was to acquire California, that acquisition was thus brought within the scope of the war, and must be so regarded by the courts.

To this point, the case of *Harcourt v. Gailiard*, 12 Wheat., is cited. Such being the object or scope of the war, it is urged that the intended conquest of California embraced not only the establishment of sovereign rights in the Territory, but also the acquisition of the public property within it.

That the proprietary rights to be acquired by the conquest are as essential, though not as important a part of the fruits of conquest, as the political rights, the commercial, and other advantages proposed to be obtained, and that no part of these objects of the conquest is to be ignored.

The conquest of California, including the acquisition of the public domain, having been thus shown to have been the object, or brought within the scope of the war, it was urged that any grants of public

land made after the conquest was projected, and when it was about to be effected, though before it actually occurred, must be deemed to be in fraud of the rights of the incoming conqueror, and invalid as against him.

The foregoing statement is believed to present the outline of the argument submitted on the part of the United States.

Both the premises and the conclusion must be examined.

If the conquest of California was the object of the war it must be so considered, because that object was avowed by competent authority when war was declared; or, because it was made the object of the war after its commencement by the political branch of the government.

It may be admitted that this government had long regarded California, or the bay of San Francisco, as an important and desirable acquisition. The instructions of the President to Mr. Slidell indicate the wish of the Executive to obtain it by purchase and cession, as Louisiana and Florida had been acquired.

It by no means follows that the intention to obtain it by force of arms, or conquest, can be attributed to Congress, still less that such was its object or motive in declaring war.

The law by which war was declared recognises it as previously existing by the act of Mexico; and it is known that hostilities arose from an invasion by Mexico of a territory claimed by the United States to be within their limits. Such was not, therefore, the object for which war was declared, or its existence recognised—nor could it constitutionally have been.

It is observed by Mr. C. J. Taney, in *Fleming v. Page*, 9 How., 614: "The genius and character of our institutions are peaceful, and the power to declare war was not conferred upon Congress for the purpose of aggression or aggrandisement, but to enable the general government to vindicate by arms, if it should become necessary, its own rights and the rights of its citizens. *A war, therefore, declared by Congress can never be presumed to be waged for the purpose of conquest or the acquisition of territory.*"

As a limitation upon the power of Congress, this distinction may, practically, be unimportant. As every war in which the country may be engaged must be regarded by all branches of the government, and even by neutrals, as a just war; and as nations can readily cloak a spirit of rapacity and aggression under professions of justice and moderation, it is at all times easy, should our country be actuated by such a spirit, to declare an aggressive war, to be undertaken in self-defence, and an intended conquest to be desired only as a compensation for past or security against future injuries.

But the distinction is important when a court is asked to presume that conquest was the object of the war.

Under our government, at least, such a presumption cannot be indulged.

The conquest of California being thus shown not to have been the object for which war was declared, we may next inquire whether, by the acts of the Executive under its power to conduct the war, it became such, or was brought within its scope, in the sense in which the phrase was used at the bar?

Gilson

In his annual message to Congress, in December, 1846, the President distinctly states that the war originated in the attempt of Mexico to reconquer Texas to the Sabine. After adverting to the considerations which had induced the Executive to interpose no obstacles to the return of Santa Anna, the latter being more favorably disposed to peace than Paredes, who was then at the head of affairs, the President observed: "The war has not been waged with a view to conquest, but having been commenced by Mexico, it has been carried into the enemy's country, and will be vigorously prosecuted there, with a view to obtain an honorable peace, and thereby secure ample indemnity for the expenses of the war, as well as our much injured citizens, who have large pecuniary demands against Mexico."

Similar declarations are frequently and emphatically repeated by the President in various communications to Congress, and in the correspondence between the American commissioner and the Mexican authorities.

The object of the war, therefore, as indicated by executive acts and declarations, was not conquest, or, if conquest, it was that of a safe and honorable peace.

It is true, that after the military occupation of California, and after our arms had been everywhere successful, and perhaps at the commencement of hostilities, the Executive and the nation may have confidently anticipated that by the treaty of peace we would acquire California. As Mexico was known to be impoverished, and distracted by civil dissensions, it was obvious that the only indemnity she could afford us for expenses of the war was the cession of a portion of her territory.

The instructions of the Secretary of State to Mr. Trist show that the extension of the boundaries of the United States, over New Mexico and Upper California, for a sum not exceeding \$20,000,000, was a condition *sine qua non* of any treaty.

The extraordinary successes of our arms, the fact that we already held possession of a great part of the territory of the enemy and virtually of his capital, our great expenditures of blood and treasure entitled us to retain a portion, at least, of our conquest as the only indemnity we could obtain. But we were willing to restore a considerable part of our possessions, and to pay for that retained by us a large amount of money.

But such views and intentions on the part of the Executive as to the condition on which the war should cease, are very different from waging it with a view to conquest. The war, then, cannot, in any just sense, be deemed to have been declared by Congress, or conducted by the Executive, with a view to conquest.

The power of the President in the conduct of the war was that of commander-in-chief of the army and navy. He had authority to direct and control military operations. As part of the treaty making power, he could determine where and on what conditions a treaty of peace should be made. But he had no power to impress upon the war a purpose different from that with which it was commenced, and which, as Mr. C. J. Taney declares, Congress could not constitutionally entertain. "The law declaring war," observes the same great authority in

the case above cited, "does not imply an authority to the President to enlarge the limits of the United States, by subjugating the enemy's country. The United States, it is true, may extend its boundaries by treaty or conquest, and may demand the cession of territory as the condition of peace, to indemnify its citizens for the injuries they have suffered, or to reimburse the government for the expenses of the war.

But this can be done only by the treaty-making power, or the legislative authority, and is not a part of the authority conferred upon the President by the declaration of war. His duty and his power are purely military. As commander-in-chief, he is authorized to direct the military and naval forces placed by law at his command, and to employ them in the manner he may deem most effectual to harass and conquer and subdue the enemy. He may invade the hostile country, and subject it to the sovereignty and authority of the United States. But his conquests do not enlarge the boundaries of the United States, nor extend the operations of our institutions and laws beyond the limits before assigned them by the legislative power."

It is true that in the case in which these observations are made, the point to be determined was, whether enemies' territory, which in the course of hostilities had come into our military possession, became a part of the United States, and subject to our general laws. But they are important to this case as defining the power of the President in war to be merely that of the military commander-in-chief, that territory can be acquired only by the treaty-making and legislative authority, and, consequently, that the fact that hostilities are by the military authority directed against a particular portion of the enemy's territory, cannot be said to make the acquisition of that territory the object of the war.

It is therefore apparent that the war with Mexico cannot be regarded by the judicial department of this government as commenced, or conducted, with the object of effecting the conquest of California.

The most that can be said is, that its military occupation was effected as a means of crippling and subduing the enemy, and with the expectation, on the part of the Executive, that we would retain, and finally insist upon the cession of the territory so subjugated by our arms as an indemnity for our injuries and expenses.

The nature and amount of indemnity to be required, the extent of territory to be ceded, depended upon the will of the Senate and the Executive as the treaty-making power, and until that will was expressed in the treaty, the intention to effect the permanent acquisition of all California cannot be attributed to the political power, any more than a similar intention with regard to those conquests which at the close of the war were restored.

If, then, it were a principle of public law that all alienations of public domain by a sovereign are invalid as against an enemy who has commenced or is prosecuting a war, with the object of conquering the territory within which the property is situated, or who has set on foot expeditions for the purpose, with sufficient power to attain the end, as proved by the event, the facts of this case would hardly admit of its application.

But assuming the facts as contended for by the United States, we

proceed to inquire whether such a rule of law exists. The right of Mexico to dispose of her public domain in California before the war is admitted. It is not denied that that right ceased, as against the United States, when the latter effected the conquest of the country, and subverted the Mexican authority.

Fish

If it ceased before the actual conquest and displacement of the Mexican authority, it must be because the determination of the United States to effect the conquest, and the making preparation to carry out its determination, gave to the latter some inchoate or inceptive right to the territory subsequently conquered, and the title consummated by the conquest relates back by a kind of fiction to the date of its inception.

We have been unable to discover any trace or intimation of such a doctrine in any writer on the laws of war.

The rights derived from conquest are derived from force alone. They are recognised because there is no one to dispute them, not because they are, in a moral sense, rightful and just. The conquest of an enemy's country, admitted to be his, is not, therefore, the assertion of an antecedent right.

It is the assertion of the will and the power to wrest it from him.

Even where a conquest is effected to obtain an indemnity justly due, it is not the assertion of any antecedent right to the particular territory conquered, but only of the general right to a compensation for injury.

The right of the conqueror is, therefore, derived from the conquest alone. It originates in the conquest, not in the intention to conquer, though coupled with the ability to effect his purpose, nor even in the right to conquer as means of obtaining satisfaction for injury.

It is fact of conquest, not the intention or power to conquer, which clothes him with the rights of a conqueror.

The rights acquired by the conquest are temporary and precarious until the *jus postliminii* is extinguished, and if a reconquest is effected, the rights of the sovereign who has temporarily been displaced revive, and are deemed to have been uninterrupted.

The term title by conquest expresses, therefore, a fact and not a right. Until the fact that conquest occurs the conqueror can have no rights. To affirm that a title acquired by conquest relates back to a period anterior to the conquest, is almost contradiction in terms.

Until, then, the conquest is effected, the rights of the existing sovereign remain unimpaired. He can, therefore, dispose of the public property at his discretion, nor can that right be effected by the determination of an enemy to conquer the territory, and by his preparations for the purpose, though the event may demonstrate the conquest to have been practicable.

The case of *Harcourt v. Gaillard* has been cited by the counsel of the United States in support of the doctrine contended for by them.

The distinction between that case and the case at bar is obvious.

In *Harcourt v. Gaillard* the question was as to the validity of a grant by a British governor, of land within a territory claimed to belong to the United States. As our government had asserted and maintained by arms its title to the disputed tract, the judicial department were not at liberty to declare the claim to be wrongful, and o

recognise the right of any other sovereign over the territory in question.

The title of the United States was in no sense acquired by conquest. Her title was antecedent to the war—it was merely maintained by arms and recognised by the treaty of peace.

The question presented was, in the language of the court, “one of disputed boundaries, within which the power that succeeds in war is not obliged to recognise as valid any acts of ownership exercised by his adversary.”

Had the claim been that of conquest alone, the case would have presented, says the court, more difficulty. “That ground would admit the original right of the governor of Florida to grant, and if so his right to grant *might* have continued until the treaty of peace, and the grant to Harcourt might, in that case, have had extended to it the principles of public law which are applicable to territories acquired by conquest, whereas the right set up by South Carolina and Georgia denies all power in the grantor over the soil.”

The distinction is made still more apparent in a subsequent part of the opinion of the court: “War is a suit prosecuted by the sword; and where the question to be decided is one of *original claim to territory*, grants of soil, made *flagrante bello* by the party that fails, can only derive validity from treaty stipulations. It is *not necessary* here to consider the *rights of the conqueror in case of actual conquest.*” (p. 528.)

The latter is precisely the question to be considered in the case at bar.

The argument of the counsel for the United States can, therefore, derive no support from the case referred to.

It is proper, however, to observe that the case of Harcourt *vs.* Gailard was not cited by counsel as directly in point. It was thought to establish that all grants of territory brought within the scope of the war are invalid; that the case of disputed boundaries presents but an illustration of the general principle—while the case at the bar furnishes another.

It has seemed to me, however, that the principle of that decision relates exclusively to the case of disputed boundaries, and that the distinction is clearly drawn between that case and one like the present—that between them the obvious difference exists; that the former is a case of “original claim to territory,” while the other is one of “actual conquest.”

It is said on the part of the United States, that if a belligerent can, after a declaration of war, grant any portion of his property he can grant the whole, and thus might, by granting himself away, escape responsibility. The case supposed is an extreme one. It can rarely occur that a nation will seek safety by self-destruction.

But in such case the adversary might refuse to recognise such a voluntary suicide as affecting his rights. For the purpose of obtaining satisfaction he might justly treat the nationality sought to be extinguished as still existing. But at all courts his rights would be enforced against the successor or grantee of the extinguished sovereign.

The question would then be purely political, for the new sovereign, whether to carry on the war, or accede to the demands of the enemy

of his grantor, and for the latter whether to prosecute the war against the new sovereign. Little aid, however, can be derived from the consideration of such extreme and improbable cases.

It is further urged, that the doctrine contended for on behalf of the United States is in the prize law.

It may, perhaps, be admitted that a theory of maritime prize formerly obtained, which assumed that a belligerent has a vested right by the declaration of war in all sea-borne private property of the other belligerent; that no such property can be the subject of lawful sale; that all contracts of sale touching belligerent property of any sort, though valid on land, are invalidated by the mere fact of such property being embarked on the ocean, and that if transferred to a neutral after the declaration of war it is lawful prize to the other belligerent.

Such is not now the received law of nations. It is now admitted that the *bona fide* sale of the ships of belligerents to neutrals in time of war is lawful and valid unless made in *transitu*.

In the *Johanna Emilia*, 29th Eng. L. and Eg. R., p. 562, Dr. Leisnington says: "It is not denied that it is competent for neutrals to purchase the property of enemies in another country, whether consisting of ships or anything else. *They have a perfect right to do so, and no belligerent right can override it.*"

Such is the doctrine maintained by our government. See opinion of Mr. Attorney General Cushing, October 8th, 1855.

If a sale to a neutral of a ship in *transitu* is held invalid as against a belligerent, it is not by reason of any inchoate right or lien acquired by the latter by the mere declaration of war, or because the right of the enemy to dispose of his property is invalidated by the declaration of war, but because a sale of a ship in *transitu* is taken as proof of collusion and fraud, and as showing that no absolute transfer has, in fact, been made. The soundness of even this rule is doubted by the Attorney General in the opinion referred to.

A sale of a ship not in *transitu* by a belligerent to a neutral is valid as against a subsequent captor, no matter how imminent the danger of capture would have been had she remained enemy's property, and no matter what may be the number of hostile fleets fitted out to cruise against her and similar property of the belligerent.

It appears, then, that the law of nations, with regard to prize of war, does not recognise the principle contended for.

It is urged, however, that this principle lies at the foundation of the doctrine of *post liminii*.

It is argued that a state of war implies the reciprocal denial by each belligerent of all rights on the other.

That each relies upon force alone—force to retain or force to take.

They are thus in *aequali jure*.

The principle, therefore, by which, on a reconquest, the original title revives, and is deemed to have been uninterrupted, is founded on the presumption that the displaced sovereign intended a reconquest when he was displaced, and his title on a reconquest relates back to the time when he is presumed to have formed such intention. If, then, (it is argued,) the title by reconquest relates back to the time of the formation of the intention to reconquer, the title by conquest must relate

back to a similar period; for a state of war implies the negation of all antecedent right on either side. The only difference between the cases being, that in the case of a reconquest the intention to reconquer is presumed until the *jus post liminii* is extinguished, while in the case of conquest that intention must be shown by the political acts and declarations of the conqueror.

The argument is ingenious, but the premises are, I think, erroneous.

It is assumed that a *new* title is acquired by a sovereign who recovers territories from which he has temporarily been driven.

On the contrary, he holds it by his original title, which could only have been displaced by a permanent conquest. But the fact that he recovers the territory, proves that what seemed a conquest was but a temporary dispossession. The invader, therefore, acquired no rights, nor did the original sovereign lose any. He continues to rule, not by a newly acquired title which relates back to any former period, but by his ancient title, which, in contemplation of law, has never been divested.

Nor is it true that war is the reciprocal denial of all rights by the belligerents, with respect to the territories of either.

A conqueror does not deny that the territory seized was at the time of the conquest the territory of his enemy, any more than the attaching creditor denies the property attached to be that of his debtor.

On the contrary, he asserts it to be his. He seizes it as the property of his enemy, and because it is his. He asserts no antecedent title in himself. He declares not that the territory was his, but that he will make it his by conquest.

The title or right acquired by a conquest is not the same as that of the original possessor.

It is temporary and precarious, and ceases the moment the conqueror is expelled. If, indeed, a title by conquest can be said ever to have existed when the court has proved that the attempted conquest could not be maintained.

The title of the original owner is wholly unaffected by the temporary dispossession, and even during his dispossession it is treated as valid and subsisting until the *jus post liminii* has been extinguished.

The extinction of the *post liminii* is necessary to ripen the temporary and merely possessory right of the conqueror into such an ownership of the territory as neutrals can recognise.

If these views be correct, the case of a reconquest does not present the instance supposed of a title relating back to the period of the formation of the intention to reconquer.

But the further discussion of this subject would require more time and space than can be devoted to it.

It might, I think, be demonstrated, that a rule which supposes all rights of a sovereign, with respect to territory subsequently conquered, to cease as against the conqueror, *not* when war is declared, but when the war is prosecuted with the object of conquest, when expeditions are fitted out for the purpose, and when the conquest is "imminent and inevitable," is not susceptible of practical application as a rule of international law.

That those rights must continue until the date of actual conquest, of

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the treaty of cession, or else must cease at the declaration of war, and that an attempt to estimate the "imminency" of the conquest at any intermediate period, or to try the validity of the exercise of sovereign rights, by calculating the chances of war at a particular moment, would be impracticable and illusory.

On the whole, we are of opinion that the right of Mexico to grant her public domain in California, continued until the conquest of the country by the United States.

It is further urged, on the part of the United States, that grants made after the 13th May are not protected by the treaty of peace, because such was not the intention of the parties.

— That the Mexican commissioners who negotiated the peace, and who represented the claimants as well as the Mexican government, solemnly, and after special inquiry, declared that none such existed.

That the treaty was negotiated on the faith of this declaration.

It is admitted that such a declaration was made, and embodied in the *project* of the treaty submitted to the Senate.

Had this declaration been contained in treaty as adopted and ratified, it might very possibly have been regarded as a covenant or stipulation that in such grants should be deemed valid by the United States.

But the clause containing it was struck out by the Senate, not by the general vote which struck out the whole of the 10th article of which this declaration formed a part, but by a distinct vote upon the question whether this particular clause should stand as a part of the treaty.

The court cannot assume, therefore, that the treaty was assented to by the United States on the faith of this declaration by Mexico, else why strike it out?

It may, not unreasonably, be supposed that the Senate refused to allow the declaration to remain, because they were willing that grants made after the 13th May, if any such there were, should be submitted to the courts, and rejected or confirmed, as might be just.

But assuming that the treaty was concluded on the faith of this declaration, the rights of an individual to his property cannot be effected by it.

The stipulation in the treaty by which the property of the inhabitants of the ceded territory was secured, conveyed to them no additional rights. "An article to secure this object, so deservedly held sacred in the view of policy as well as of justice and humanity, is always required and never refused." (12 Wheat., 536.)

"When such an article is submitted to the courts, the inquiry is, whether the land in controversy was the property of the claimant *before the treaty*." (U. S. *vs.* Awedondo, 6 Pet., 712.)

If, then, the land in controversy was the private property of the claimant when the country was acquired, it must have remained such, though no treaty had been made. The United States do not claim to have acquired the ownership of any other property than the public property of the enemy, nor could they justly have demanded that Mexico should assent by the treaty to the confiscation of any property, the right to which was vested in private individuals.

If, then, the United States have been wilfully or accidentally de-

ceived, as to the amount of property held in private ownership in the ceded territory, they may have a right to demand a return of some portion of the pecuniary equivalent paid by them.

The fraud or mistake of the Mexican commissioners can have no effect upon a private right held sacred by the laws and usages of all civilized nations, which was not derived from the treaty, and which, had it been known to exist, the United States would have been bound to respect.

These observations are made with reference to the general proposition maintained at the bar, viz: that the declaration by Mexico that no grants had been made subsequent to May 13, 1846, invalidated all such grants to the same extent as if a stipulation to that effect had been embodied in the treaty."

We proceed to consider the merits of the case at bar.

The claim was rejected by the board for want of proof of the mesne conveyances through which the claimants derive title.

That defect has been supplied by evidence taken in this court.

In support of their title the claimants have produced :

1st. A petition in the usual form, addressed to the governor by Benito Dias, for the land called "Punta de Lobos," and dated April 3d, 1845.

On the margin of his petition is an order for information, dated May 24th, 1845.

2d. The "informees of the officers" as required by the governor.

3d. The formal grant signed by Pio Pico, governor, and José Mathias Moreno, secretary, and dated June 25th, 1846.

The claimants have also produced a private letter from Juan Bandini, secretary of the governor, dated on the same day with the order for information to Benito Dias, in which he expresses to the latter his regret that he had not first obtained the certificates of other "informees" and sent them with the petition, "in which case he would have had the pleasure of sending him all his matters concluded."

The signatures to these documents are proved by the testimony of Pio Pico himself, and by other witnesses, nor has any attempt been made to call in question their genuineness. It is suggested, however, on the part of the United States, that they were signed subsequently to their date, and after the final subversion of the Mexican authority in California.

Benito Dias, the original grantee, was examined as a witness by the claimants, he having assigned all his interest in the grant.

He states that the grant was in his handwriting, and that he wrote it and sent it to the governor for signature, in consequence of a letter from Bandini, secretary of the governor, stating that the grant must be obtained immediately, as the country was in a critical state; that this was done on the 20th or 21st June, at San Francisco; that he received the grant on the 5th or 6th of July, at Monterey, and that it was handed to him by Antonio Maria Osio, who received it from Celis, the courier of Dias, to whom it had been delivered by the governor. That the grant was signed by Pio Pico, at Santa Barbara, or Buena Ventura, the courier whom Dias had despatched to Los Angeles having met the governor on the road at one or other of those places.