

CASE No.
178

SOUTHERN DISTRICT

SAN JOAQUIN OR ROSA MORADA GRANT

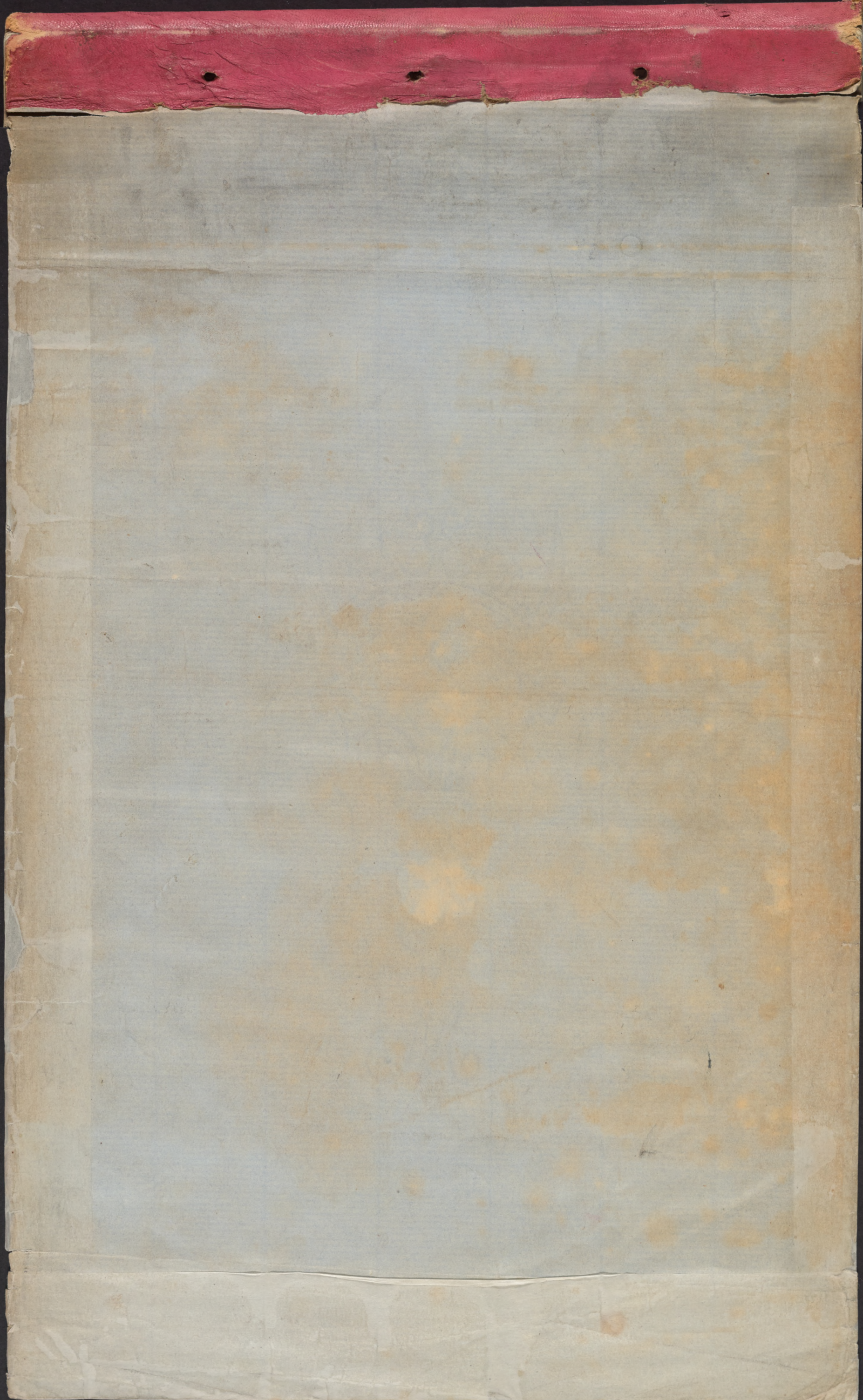
CRUZ CERVANTES
CLAIMANT

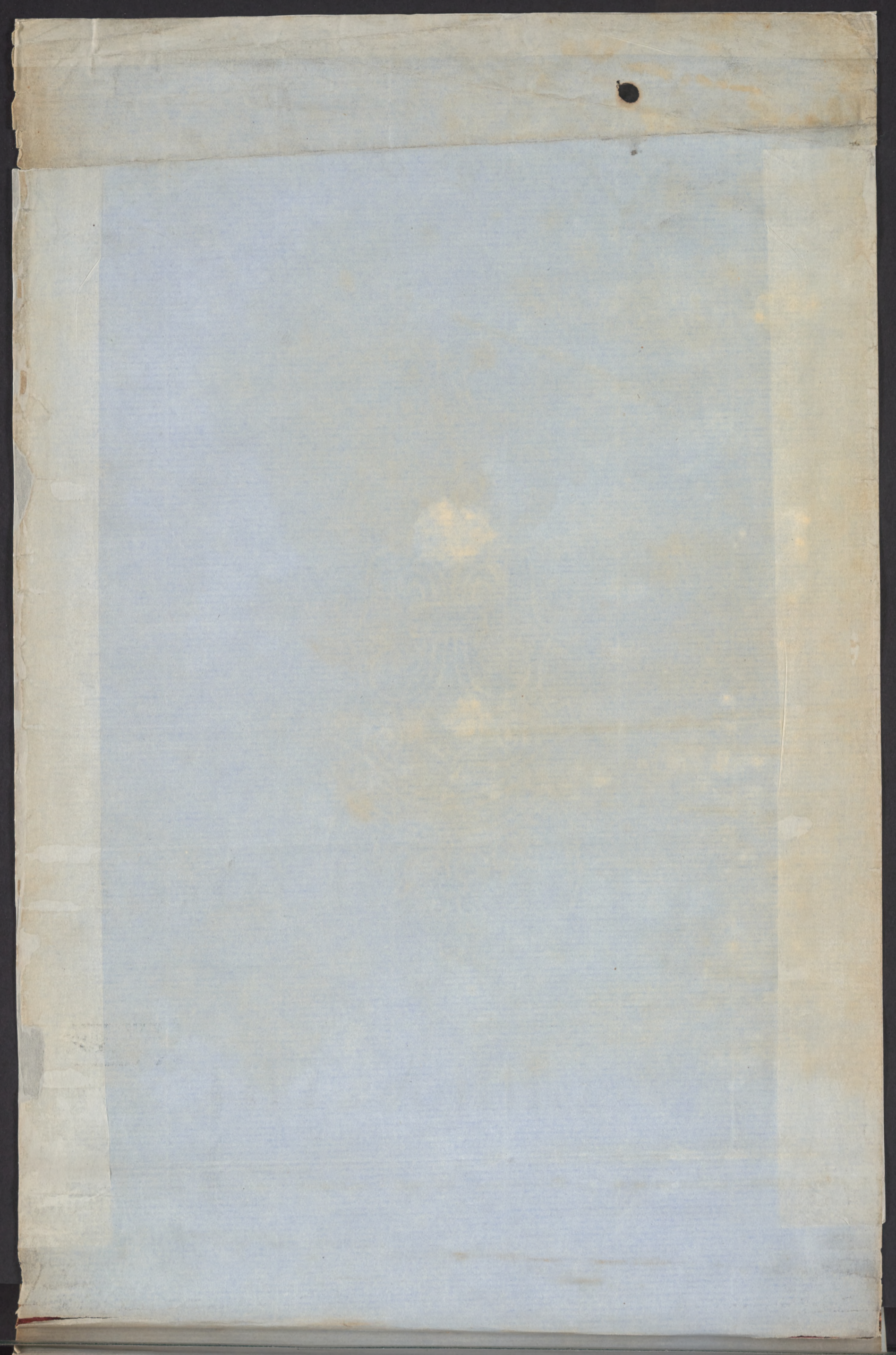
LAND CASE 178 B. D. 201 p.

MAR 7 1963

LAND CASE 178 S.D.

Pages 148-152 missing when case deposited at Bancroft Library, 1961.





TRANSCRIPT

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PAGE 1

OF THE

PROCEEDINGS

IN CASE

NO. 56

Cruz Cervantes

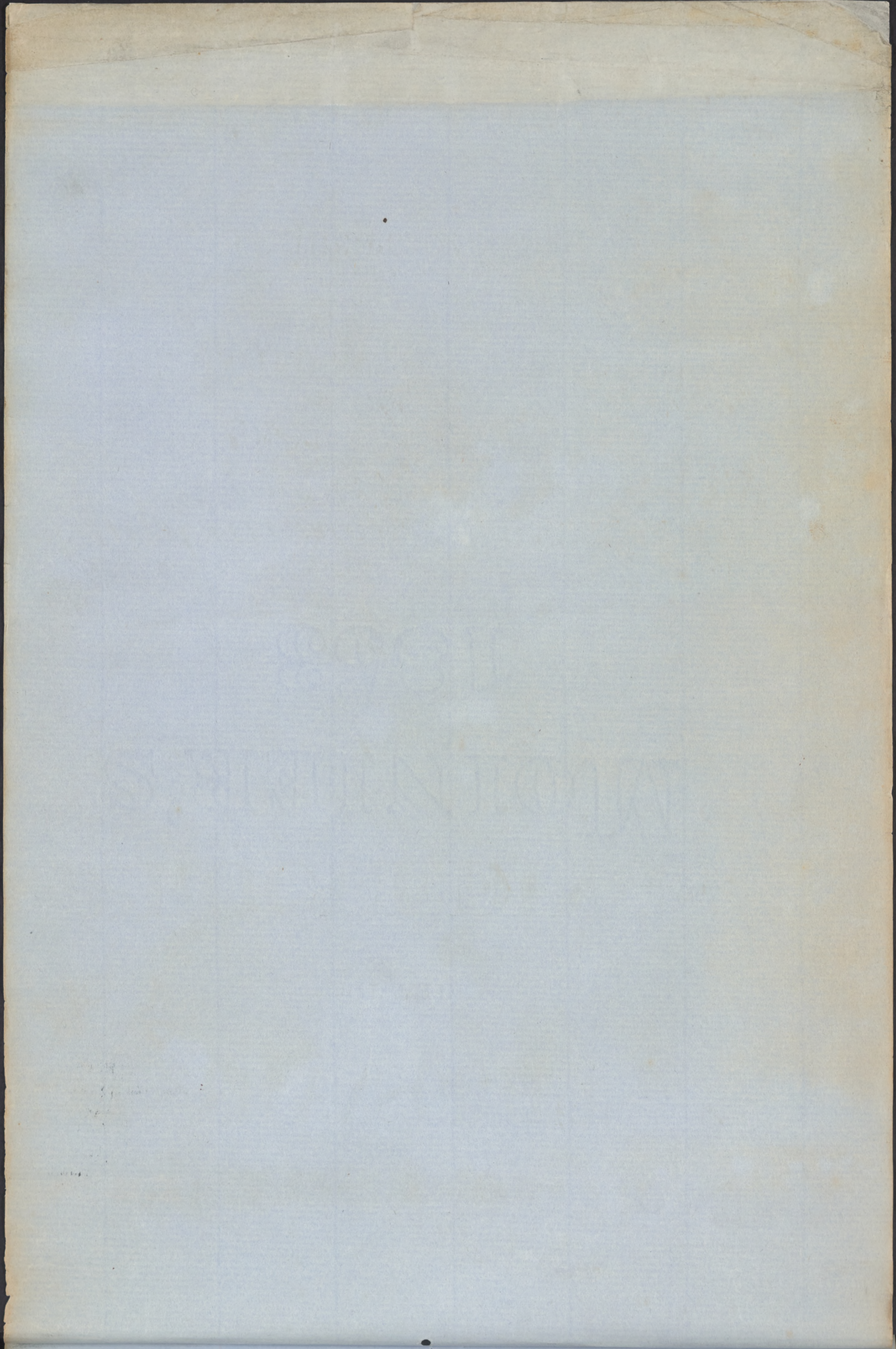
CLAIMANT

VS.

THE UNITED STATES, DEFENDANT,

FOR THE PLACE NAMED

"San Joaquin or Rosa Morada"



56.
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 *twentieth day of February*, Anno Domini One Thousand Eight Hundred and Fifty-*Two*, before the Commissioners to ascertain and settle the Private Land Claims in the State of California, sitting as a Board in the City of San Francisco, in the State aforesaid, in the United States of America, the following Proceedings were had, to wit;

The Petition of *Cruz Cervantes*,
for the Place named
"San Joaquin" or "Rosa Morada",
was presented, and ordered to be filed and docketed with No. 56, and is as follows, to wit;

(Vide page 9 of this Transcript.)

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

San Francisco February 27' 1852.
In case no. 56, Cruz Cervantes for the place named "San Joaquin or Rosa Morada," the deposition of David S. Spence, a witness in behalf of the claimant, taken before Commissioner Melina Hall, was filed;

(Vide page 11 of this Transcript.)

San Francisco March 2' 1852.
In the same case the deposition of Alexis Goey, a witness in behalf of the claimant, taken before Commissioner Harry J. Thornton, was filed;

(Vide page 12 of this Transcript.)

San Francisco, March 11' 1852.
In the same case the Secretary filed the translation of the original Expediente marked A. H. H. and annexed to the deposition of David S. Spence, a witness in behalf of the claimant, taken before

Commissioner Hecuba Hall, and filed in office on
the 27th February 1852, - which translation is in
the words and figures as follow to wit:

(Vide page 47 of this Transcript.)

~~~~~

San Francisco March 16<sup>th</sup> 1852.

In the same case the U. S. Law Agent made a  
motion to dismiss the case, which is in the words  
and figures as follow to wit:

(Vide page 89 of this Transcript.)

Which motion having been overruled the case  
was set for hearing on Tuesday 23<sup>rd</sup> inst.

~~~~~

San Francisco March 30th 1852.

In the same case the deposition of Juan Castañeda,
a witness in behalf of the United States, taken before
Commissioner Harry D. Thornton was filed:

(Vide page 13 of this Transcript.)

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San Francisco April 13<sup>th</sup> 1852.

Case no. 56, Cruz Cerrantes, "San Joaquin alias Rosa  
Marada"; set for argument for 22<sup>nd</sup> instant.

~~~~~

San Francisco April 22nd 1852.

Case no. 56 set for hearing to day was continued
to Thursday the 29th inst.

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San Francisco April 26<sup>th</sup> 1852.

In the same case the deposition of Francisco Perez  
Pacheco, a witness in behalf of the claimant,  
taken before Commissioner Harry D. Thornton  
was filed:

(Vide page 15 of this Transcript.)

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San Francisco April 28th 1852.
In the same case the deposition of William E. P. Hainell, a witness in behalf of the Claimant, taken before Commissioner Henry J. Thornton was filed.

(Vide page 17 of this Transcript.)

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San Francisco April 29th 1852.
Case no. 56 was called; Argument commenced by Mr. Shode, one of the Counsel for the Claimant followed by G. W. Cooley W. S. Law Agent, and continued for tomorrow.

In the same case the following witnesses having been sworn before the Board, declared as follows to wit:

Geo. B. Tingley, Stated:
"Supposing the distance of the Rancho to be fourteen leagues from Monterey, I think the nearest that it approaches the sea shore is more than ten leagues, but I do not know the boundaries of the said rancho."

Henry W. Hallock, Stated:
"I think from measurements made in the vicinity that the Rancho is forty miles from the general line of the Coast, and at least thirty from the indentation of the Bay, but I do not know the boundaries of the said rancho."

San Francisco April 30th 1852.
In the same case argument by the W. S. Law Agent resumed, and continued for further argument.

San Francisco May 1st 1852.
In the same case, Argument by Mr. Shode, one of the Counsel for the Claimant, resumed, and the Case continued to Tuesday May 11th.

San Francisco May 11th 1852.
This being the day appointed for resuming the argument in case no. 56, Cruz Coronado, Comisⁿ

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Wilson announced from the Bench, that Commis-
sioner Hall being prevented by sickness and Com-
missioner Thornton by the melancholy intelligence
received by mail of the death of his daughter, con-
sequently the majority of the Board, not being
present, all matter set for hearing for to day is
continued to Tuesday 18th May inst.

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San Francisco May 18th 1852.
Case no. 56 Cruz Cervantes Continued for further
argument.

San Francisco May 25 1852.
Case no. 56 was called and continued.

San Francisco June 1st 1852.
Case no. 56, set for hearing on Friday next 4th
inst.

San Francisco June 4th 1852.
Case no. 56. Called; The argument for the claimant
resumed by Wm Carey Jones, one of the Counsel,
and continued for tomorrow at 11 o'clock A.M.

San Francisco June 5th 1852.
Case no. 56. Called; The argument by the Counsel
for the claimant resumed and concluded and
the case continued to Thursday next 10th inst,
at 11 o'clock A.M.

San Francisco June 10th 1852.
Case no. 56 Called, and on motion of the U. S.
Law Agent, continued to Tuesday next, 15th inst,
at 11 o'clock A.M.

San Francisco June 15th 1852.
Case no. 56 Called, Argument by the U. S. Law
Agent resumed and Case continued to tomorrow
11 o'clock A.M.

San Francisco June 16th 1852.
 Case no. 56 Called, Argument by the W. S. Law
 Agent resumed and concluded, and the Case
 taken under advisement by the Board.

In the same case the W. S. Law Agent filed
 the Colonization Law of August 18th 1824 marked
 Exhibit D, and Extracts from the Journal of
 the Departmental Junta marked Exhibit "E" as
 evidence in behalf of the United States, which
 Exhibits are in the words and figures as follow
 to wit:

(Vide pages 63 & 71 of this Transcript.)

In the same Case the Secretary filed Translations
 of Exhibits "D and E" filed by the W. S. Law Agent,
 this day as evidence in behalf of the U. S., which
 translations are as follow to wit:

(Vide pages 67 & 73 of this Transcript.)

San Francisco June 30th 1852.
 In the same case the Counsel for the Claimant
 filed an Authenticated Copy of an original Spanish
 document on file in the Office of the W. S. Surveyor
 General for California, entitled "Index of Land
 Titles," accompanied by a letter dated June 29th 1852
 signed Samuel D. King, and addressed to W^m
 Carey Jones Esq, as evidence in behalf of the
 Claimant in this Case, which document and
 letter having been admitted by the Board, with
 the Consent of the W. S. Law Agent, as evidence,
 it was ordered to be spread on the Records, marked
 Exhibits F & G, and are in the words and figures
 as follow to wit:

(Vide pages 75 & 88 of this Transcript.)

In the same Case the W. S. Law Agent submitted
 to the Board, as evidence in behalf of the United
 States, Copies of two Original Spanish documents
 on file in the Office of the W. S. Surveyor General
 for California, authenticated by the said Surveyor
 General, which Copies were filed in this Case, March
 22nd 1852, as Exhibits A & B, with their respective
 Translations, and are as follows to wit:

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Vide page 21 & 57 of this Transcript.)

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San Francisco July 3rd 1852.
In the same case the United States Law Agent, in
behalf of the U. S., filed and submitted as evidence
an authenticated Copy from the U. S. Surveyor
General, of the General Regulations for the Colonization
of the Territories of the Mexican Republic, dated 21st
November 1828, which, marked as Exhibit H, was
ordered to be filed among the papers in this case,
and is as follows, to wit:

(Vide page 77 of this Transcript.)

In the same case the Secretary filed the Translation
of the General Regulations, marked Exhibit H,
above described, and is as follows, to wit:

(Vide page 81 of this Transcript.)

San Francisco Aug. 3rd 1852.
Case no. 56 being Calceda, Commissioner Harry J.
Thomson delivered the Opinion of the Board,
declaring the claim valid; the entering of the
Decree of final Confirmation being reserved
for a future day.

Los Angeles Aug. 31st 1852.
In the same case the Counsel for the Claimant
presented the following Motion, to wit:
(Vide page 90 of this Transcript.)

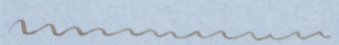
The above motion was taken under advisement.

Los Angeles Sept. 1st 1852.
In the same case the motion filed on yesterday
by the Counsel for the Claimant, was overruled
and the order therein prayed for, denied.

Los Angeles Sept. 6th 1852.
In the same case the Counsel for the Claimant
filed the following Motion, to wit
(Vide page 91 of this Transcript.)

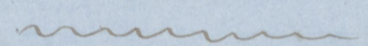
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Which was taken under advisement,



Sos Angeles Sept. 13th 1852.

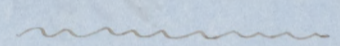
In the same case the motion of the Counsel for the Claimant heretofore filed, on the 6th inst, was over-ruled, and the petition denied.



Sos Angeles Sept. 27th 1852.

In the same case the Counsel for the Claimant, Mr. Jones, moved the Board for leave to withdraw the original papers, certified copies of the same heretofore filed, with the petitions, to remain on file in the Office.

Which motion was taken under advisement.



San Francisco Dec. 13th 1852.

In the same case the Counsel for the Claimant filed the following motion, to wit:

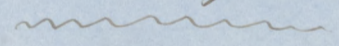
(See page 89 of this Transcript.)

Which motion was taken under advisement



San Francisco Dec. 14th 1852.

In the same case the motion filed on yesterday, by the Counsel for the Claimant was overruled and the order therein prayed for denied.



San Francisco Dec. 18th 1852.

In the same case Commissioner William Hall delivered his Opinion in this case.

In the same ^{case} Commissioner Harry J. Thornton delivered his final opinion, and the Decree of final Confirmation of this Board.

Ordered, that the Opinion of this Board, delivered by Commissioner Harry J. Thornton on the 3rd of August, 1852, the several Opinions delivered this day, and the Decree of final Confirmation of this Board, also delivered this day

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in this case, be recorded on the Journal, which
are in the words and figures as follows, to wit;
(Vide pages 91 of this Transcript.)

San Francisco Aug. 3^d 1854.

In the same case the W. S. Law Agent made
the following motion to wit;

(Vide page 135 of this Transcript.)

San Francisco Aug. 22^d 1854.

In the same case, the motion of the W. S. Law
Agent, heretofore, to wit, on the 3^d inst, filed, was
granted, and the following order was made, to wit;

(Vide page 136 of this Transcript.)

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Petition

Before the Honorable the Commission to ascertain and settle Private Land claims in California:

Cruz Servantes a citizen of said State gives notice that he claims by virtue of a grant from the Mexican Nation, a tract of land situate in the County of Santa Clara in said State, and known by the name of San Joaquin or Rosa Morada, with the boundaries described in the grant thereof, to wit: On one side the Arroyo of San Felipe; on the second side, the hills or mountains of San Joaquin; on the third the arroyo of Santa Anna, and on the fourth a line drawn through the plain of San Francisco.

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Said Land was conceded to claimant by a grant issued on the 1st day of April 1836, by Nicolas Gutierrez Superior Political Chief, ad interim of California and thereby authorized to grant Lands in the name of and on behalf of the Mexican Nation.

On the 18th of February 1841 judicial possession of said Land was given to claimant by Juan Manuel Arzoo Judge of First instance of that jurisdiction.

Said Land has been occupied by claimant according to Law and the directions contained in said grant and is now held by him in quiet possession.

There is no conflicting grant to said Land, or any portion thereof, in the knowledge of claimant.

Said Land has never been surveyed, but its boundaries are natural and well known and may be easily traced. It is supposed to contain the quantity of Two Setios de ganados Maya More or less.

A Copy and translation of said grant and a copy of said Act of judicial possession are herewith presented, and the originals are ready to be produced and proved as may be required.

Claimant requests a speedy examination of his said claim and its recognition and Confirmation.

Jones Tompkins & Stroce

Attornies for Claimant

Filed in Office Feby 20th 1852

Geo. Fisher

Sec.

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11
Deposition of
David S Spence

Office of the Board of Commissioners of California
Land Claims.

San. Francisco Feby 26. 1852

On this day before Hilana Hall one of the commissioners for ascertaining & settling private land claims in California came David S Spence a witness produced in behalf of the claimant in the case of the petition of Cruz Cervantes, being Number 56 on the Docket of said Commissioners & after being duly sworn testified as follows.

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The Law Agent was notified and attended

Questions by Mr. Jones Counsel for the claimant
1. What is your name age and place of residence
Answer. My name is David S Spence I am 53 years of age and I reside in Monterey where I have resided for twenty eight years past.

2^a. Are you acquainted with the hand writing of Nicolas Gutierrez, Francisco del Castillo Negrete, Manuel Jimeno, Juan Miguel Anzar, and if so look upon the Expediente of Cruz Cervantes marked A with the initials S & S and say if the signatures of said persons upon said ^{paper} are genuine
Answer. I have often seen them all write & am acquainted with their own handwriting with their hand writing. The signature of each of said persons I have no doubt is genuine.

3. Did Nicholas Gutierrez ever act as Governor of California? if so when?

Answer. He was acting as such in the year 1836 and Castillo Negrete was Secretary.

4. Was said Anzar acted as Justice of the Peace and when?

Answer. He was Justice of the peace, but I cannot state the exact time. It was, I think sometime between 1839 & 1842

D. S. Spence

Sworn & subscribed

Before me

Hilana Hall

Comm.

Filed in office Feby 27th 1852

Geo. Fisher Secy

13
Deposition of
Alexis Godoy

California Land Commissioners
San Francisco March 2^o 1852

At Chambers.

Before me Harry J. Thornton one of the
Board of Commissioners to Ascertain and Settle Private
Land Claims in the State of California, came Alexis
Godoy a witness summoned to testify in behalf of the
claimant Gregor Lavantes whose petition is No. 56
on the Docket. The Law Agent of the United States
being present, and the said witness being by me first
duly sworn, testified as follows to wit:

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Sworn by the Claimant.

Ques. 1. What is your name age and residence
Answer. My name is Alexis Godoy. I am thirty three
years old and reside in the County of Santa Clara

Ques. 2. Do you know any Rancho in California called
San Joaquin, if so state where it is, whether it is occu-
pied, and if whom by, and when you first knew it?

Ans. I know the Rancho called San Joaquin near that
of Francisco Pacheco, South of Pacheco's Gap in the
County of Monterey. I know it to be occupied by
Gregor Lavantes and have known the Rancho since
1846.

Ques. 3. Was it occupied when you first knew it?

Ans. It was occupied. He had cattle horses sheep and
a house on it, and cultivated the Land, and his family
lived on the Rancho. The house looked to be several
years old. They had leonards on it. I have been there
several times, and saw it always occupied.

Cross Examination by Geo. W. Woolley Esq. Law Agent

Ques. 1. What quantity of cattle horses and sheep had
he on the Rancho?

Ans. It was estimated to be five hundred head of cattle
about forty horses about one hundred sheep

Ques. 2. To what extent did the cattle horses & sheep range
over the Rancho of San Joaquin

Ans. I have seen the stock around about the house and
mixed with that of his neighbors all over the Rancho

Ques. 3. To what extent was the Land cultivated?

Ans. I have seen four or five acres in cultivation at a
time in one enclosure.

Sworn to & subscribed before me

this 2^o of March 1852

Harry J. Thornton Comr.

Filed in office
March 2^o 1852
Geo. Fisher
Secy

13

Deposition of
Juan Castaneda

Office of the Board of Commissioners of California
Land Claims. San Francisco March 30th 1852

On this day before me Henry S. Thornton one of
the Commissioners for ascertaining and settling private
Land Claims in the State of California came Juan
Castaneda a witness produced in behalf of the
United States, claimant being Cruz Lavantes No.
36 on the Docket of the Commissioners; being duly sworn
testifies as follows, his evidence being given in the
Spanish language and interpreted by the Secretary
George Fisher.

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Declarations by the Law Agent of the United States.

Ques: 1 What is your name age and place of residence?
Answ. My name is Juan Castaneda, my age about
forty five years and my present residence Sonoma

Ques: 2. What official stations have you held under
the Mexican Government in California

Ans. I came to California in 1838 as Captain of Cavalry
in the Mexican Army, and then was appointed Secre-
tary to the Commandant in Chief of the Military Forces
in California, the Commandant in Chief was Mariano
Guadalupe Vallejo. I was his Secretary upwards of
a year.

Ques: 3 What was the usage and custom in California
in obtaining the approval of the Territorial Deputation
or Departmental Assembly to Grants or Concessions of
Land made by the Govern. By whom was it
usually obtained.

Ans. There was no Law regulating the subject. The
Grantees or parties interested presented their title papers
to the Secretary of the Assembly who gave an account
of the same to the Assembly for their action.

Cross examination by the Attorney for claimant
Cross ques: 1 Do you make a distinction between "titles"
and "concessions"?

Ans. There was never made any difference between
"titles" and "concessions". The Títulos were considered
as security for the favor granted and to secure the
property.

Cross Ques: 2. To whom was, what you call "Título" deliv-
ered after the making of it?

Ans. To the party interested selecting the Land

Ques. 3 Were you ever a member of the Territorial Deputation of California?

Ans. I never was a member

Ques. 4 Were you ever Secretary of the Assembly

Ans. I never was.

Ques. 5 After you ceased to be Secretary to the Commander in Chief what was your Occupation after that?

Ans. I continued in my grade as Captain of Cavalry in the Mexican Army. Whilst I was Secretary of the Commander in Chief I went to Mexico on business of the Commander in Chief in the latter part of 1839 to beginning of 1840 and returned with Genl. Micheltorena in 1842.

Ques. 6 How often and when did the Departmental Assembly sit during the time that Micheltorena was here as Governor?

Ans. I do not know. I landed with General Micheltorena at San Diego; from thence we proceeded to Los Angeles; from thence I was detached to the Northern Frontier at Sonoma, where I remained most of the time I was once at Monterey in 1843 when the Assembly was in session, but I was never present in the Hall of Assembly.

Ques. 7. When, what you call the "Título" was delivered to the interested party what was done with the Conception?

Ans. I do not know

Ques. 8. Where was General Vallejo's statement at the time you were his Secretary?

Ans. In Sonoma

J. de Castaneda

Sworn to and subscribed before me
this 30th March 1853

Harry J. Thornton
Com^r

Filed in Office March 30th 1853

Geo. Fisher

Secy

18

Deposition of
F. J. Pacheco

Office of the Commissioners of Private Land Claims
in California. San Francisco April 26. 1852

On this day before me Harry S. Thorton one of the
Commissioners for ascertaining and settling Private
Land Claims in California came Francisco Perez
Pacheco a witness produced on behalf of the claimant
Cruz Covantes, whose petition is No. 36 on the docket
of said Commissioners. The witness being duly sworn
testified as follows. The Subpoena being duly
notified and attendance by Mr. Green hood

Questions by Claimant

Quest. 1. What is your name age nativity and place
of residence?

Ans. My name is Francisco Perez Pacheco 39 years of
age, my birth place Guadalupe my residence in
Monterey in California

Quest. 2. How long have you resided in California
and what places have you resided at since you came

Ans. I resided in California thirty two years, almost
exclusively at Monterey, except the time I resided
at my Rancho San Felipe de Guadalupe in the
County of Monterey.

Quest. 3. Do you know Cruz Covantes the claimant
in this case? if so, where does he reside?

Ans. I know him. He lives on his Rancho called San
Joaquin in the County of Monterey.

Quest. 4. State how long has he resided on that Rancho

Ans. I do not exactly recollect the time, but I believe
it was about two years after the revocation of
Somas Chico and Gattines when he commenced
residing on it.

Quest. 5. State whether he has stock upon said Rancho
and whether he has cultivated or otherwise improved
it?

Ans. He has occupied it with stock, and built
some small houses upon it, and made enclosures
and cultivated the ground, and still occupies it thus

Quest. 6. Were you present when judicial possession
was given to Covantes of his Rancho if so, state
by whom it was given

Ans. I was present, and it was given by Juan Miguel
Anzar, acting in the capacity of Justice of the Peace of
the County Mission of San Juan Bautista

Quest. 7. Examine the paper marked A, attached to the
deposition of David Spence given in this case and say

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and say whether your signatures where they appear upon that paper are genuine and whether they were made at the time they purport?

Ans. I have examined the paper described in the foregoing interrogatory, and find six signatures on various papers in my own hand writing, which I recognize as genuine signatures, signed at the time stated in the ^{said} Document

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Quest. 8 State whether you saw Anzar, Manuel Castanares present at the giving of the precedes possession you have spoken of, and if you recollect whether they signed the paper above referred to, on the same occasions with you.

Ans. I have seen Anzar and Manuel Castanares present at the giving of the precedes possession of the said Rancho to Cruz Corvantes, but I do not recollect of their having signed the said Document at that time with me, but I do recognize the signatures of Anzar on the said Document as his genuine signatures, also the signatures of Jose Manuel Vargas as genuine

Quest. 9 State if you know where Anzar, Castanares and Vargas now are?

Ans. Anzar is still living at the town of San Jose in the County of Santa Clara in a very feeble state of health Castanares is in Mexico and Vargas is dead

Quest. 10 How many leagues is the Rancho de San Joaquin of which you have been testifying, from Monterey

Ans. I believe it is fourteen or fifteen leagues from Monterey

Quest. 11 Did you know Jose Joaquin Gomez, Jose Maria Maldonado, Jose Antonio de la Guerra y Carrillo and if so, do you know where they now are

Ans. I did know them all. Gomez is dead Maldonado is also dead and Carrillo I believe is living at Santa Barbara (Cross interrogatory propounded by Law Agent)

Quest. 12 At the time when possession was given to Corvantes of this Rancho was any doubt expressed as to the genuineness of his title?

Ans. I do not know of any doubt having been expressed on the subject

Quest. 13 Did you always understand that his title was perfect.

Ans. I do.

Mano Perez Pacheco

Filed in Office
April 26th 1852
Geo. Fisher. Secy

Sworn to and subscribed before me, the Law Agent having testified to this 26th April 1852. Harry Thornton Com: &c

17

Deposition of
E. P. Hartwell

Office of Board of Commissioners of California
Land Claims

San Francisco April 28. 1852

On this day before me Mary J. Thornton one of the
Commissioners for ascertaining and settling private
Land claims in the State of California came
Wm E. P. Hartwell a witness produced in behalf
of the claimant Cruz Cortantes whose petition is
Number 56 on the Docket of the Board and after
being duly sworn testified as follows. The said
Agent was notified and attended by Mr Green how
Customs by Claimant's Counsel

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Ques. 1. What is your name age and place of residence
how long you have resided in California and what
public Offices you have filled?

Ans. My name is Wm E. P. Hartwell, age 54 years
my place of residence is the County of Monterey
I have resided in California thirty years. I have
filled the Offices of Inspector General of the Missions,
Collector of the Port of Monterey. Translator to the Mil-
itary Government of California, and am at present
State Translator.

Ques. 2. Are you well acquainted with the customs &
usages in California under the Mexican Government in
relation to grants of land?

Ans. I am very well acquainted with them.

Ques. After a grant was made by the Political Chief
or Govr, was the recipient of the grant according to
those usages and customs entitled to go into possession
of the Land, and to use it and occupy it as his
owner, or did he have to wait for possession until
after confirmation by the Deputation or the Assembly

Ans. He was most certainly entitled to go into
possession immediately after receiving the Governor's title
and so from having to wait for judicial possession
or for the approval of the Deputation or Departmental
Assembly, I have known numerous instances in which
neither the one or the other were asked for, for many
years.

Ques. 4. According to those usages and customs, to
whom did it belong to bring the Concessions of land
before the bodies you have mentioned for approval

Ans. It was always considered to be the duty of the
Governor to do that and I know from my own knowledge
that whilst the Deputation was held in Monterey the

Governors always did so. I never knew of any grantee interesting himself about getting the approval of his title until it was rumored that the Americans were coming to take possession of the Country. But then I know that by the advice of American Citizens residing in California, many title holders in the neighborhood of Monterey sent to Los Angeles to get their titles approved by the Assembly. This Rumour of the Americans coming was in 1845.

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Quest 5. According to those usages and customs were the possessions which were taken under the grants of the Governor respected and considered lawful by the public and by the Authorities of the Country?

Ans. They were to the best of my recollection always so considered and respected.

Quest 6. Do you know whether there was a civil revolution in California in the latter part of 1836 by which the existing Government was deposed, and an Independent and Revolutionary Government attempted to be established?

Ans. Such a state of things did take place somewhere about the time mentioned in the question.

Quest. 7. For what number of years immediately before the conquest or acquisition of Alta California by the Americans, did the customs and usages you have spoken of prevail.

Ans. These customs prevailed as much as eleven or twelve years before the acquisition of the Country by the Americans.

Questions by the United States Law Agent

Quest. 1. Did you consider it to be the duty of the Political Chief or Governor only to present the titles to the Deputation or Junta or Assembly?

Ans. I have always so considered it and I believe it to have been the general opinion of the inhabitants of this Country.

Quest. 2. Do you believe and was it generally believed that the Governor or Political Chief was bound in duty to present every title which had been granted to the Deputation Junta or Assembly for confirmation?

Ans. I believe and it was generally believed that the Governor or the Government Secretary under his direction was in duty bound to have every title presented to the Deputation Junta or Assembly for approval

Quest. 3. Do you believe and was it generally believed that the Governor or Political Chief was obliged so to present a title which he might regard as having been improperly granted, or as being injurious to the country?

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Ans. As far as regards myself I believe that it was the duty of the Governor to forward every title granted, to the Deputation or Assembly for its approval or disapproval

W. E. P. Hartwell

The law being present.

Sworn to and subscribed before me
this 28th of April 1852

Harry J. Stanton
Comm. Sec.

Filed in office April 28th 1852

Geo. Fisher Secy

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1. S. D. R.

56
Jurisdicción, Año de,
de Monterey } 1835.

Expediente

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Sobre el Paraje nombrado Sr. Joaquin

Solicitado por

D. Cruz Servantes

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2. J. D. N. Sello Tercero Dos Reales. Habilitado provisionalmente por la Administracion de la Aduana Maritima de Monterey de la Alta California, para los años de mil ochocientos treinta y cuatro y mil ochocientos treinta y cinco.

Arguero

A. Ramirez

Monterey Sept 22

Por Jefe Politico.

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A Expediente

de 1835. De confor. El cuido. Cruz Cervantes vecindad con las leyes. ciudadano en este Territorio, con de la Materia infor. el debido respeto hago a V. S. pre me el Ayuntamiento. sente que hallandome con el de esta Capital o el numero de doscientas Cabezas interesado en esta de Ganado vacuno de mi pro- instancia obtiene la propiedad, y decidido a fomentar requisitos prevenidos el giro de su cria, como el mas pa ser atendida a su productivo en este suelo, carece esta Solicitud de un sitio propio en que poder el terreno q. pretenda poner en ejecucion mi empresa esta comprendido en En tal concepto y seguro de estas las veinte leguas li desocupado y sin destino por mitos o dicitos. consi. valdiz el paraje nom- rales q. espresado. D. Joaquin situado en ley de 18 de Agosto de 1824 si es de Sur S. Felipe al Norte, el lla gadio, corporal o no de S. Juan. al poniente y ahavedero si per. al Oriente ^{las lomas} pertenecientes al mio- tenecce a la propio mo sitio siendo este de dos leguas dad de alguna de largo y una de ancho espere en mision, corporacion o V. tenerme por presentado y o pueblo con todo concederme la posesion del men- demas q. crea con- eionado sitio protestando formar

2. J. D. N. ducente a ilustrar el diseño correspondiente y presentar la materia evacua- lo con correspondiente descrip- do estas diligencias a este Gobierno para que pre pasara este expediente los tramites de estilo de me al S. Mayordomo adjuque y de posesion del repe de Don Juan B tido sitio. Por tanto. A. V. S. para q. se ponga lo plico se sirva mandar como llevo q. le ocurra en el pedido solo que recibire gracia. particular. El. Monterey Septre: 10 de 1835 D. Jose Castropi A Ruego del interesado por nosa mer vocal de la ber firmar.

E. Diputacion

Jose pablo Dias.

Territorial y Jefe P. Politico interino de la Alta

California así lo mando decreto y firmo de of. doy
feí José Castro

Señalado del Castillo Negro de San José.

4 S. D. R. Sello tercero Dos Reales: Habilitado provisoriamente por la administración de la Aduana Marítima de Monterey de la Alta California para los años de mil ochocientos treinta y cuatro y mil ochocientos treinta y cinco.

Agüeroa A. Ramírez.

Por Jefe Sup. Político

El ciudadano Cruz Cervantes con el debido respeto hago à V. S. presente que habiendo opeido en mi anterior escrito el presentar diseño del sitio de San Joaquin que en el tengo pedido, como lo previene las leyes de la materia, lo verifico ahora acompañando al presente el indicado diseño para que teniendo V. S. por presentado en toda forma y habiendo cumplido con los requisitos prevenidos. en todas sus partes se digna acordar despues de concedido el terreno que solicito se me de la correspondiente posesion de el con todas las formalidades legales prevenidas para el caso, siendo la demarcacion para indicar los limites del citado terreno, tirando una linea recta de Norte à Sur de legua y media de largo desde el arroyo sin agua of. esta, of. esta frente del de D. Felipe. hasta pasar una cimera que esta en direccion de las lomas de Santa Anna y una legua de poniente à Oriente desde la línea of. Señala el llano de San Juan hasta las lomas Altas de San Joaquin sirviendo de limite entre el terreno que pido y el Rancho de San Felipe el mismo arroyo sin agua.

En cuyos terminos. A. V. S. suplico se dignen mandar como llevo pedido por ser así de justicia en lo que tambien recibiré gracia.

Monterey 20 de Septiembre de 1835.

A Ruego de Cruz Cervantes hisolo.

Man. M^a Gonzales.

Septiembre 3 de 1839.

En oesion de este dia paso à la comision de terrenos valdios.

Don C. Spence

José Maria Maldonado Suo

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b.S.D. 18.

Here follows Map

25 b.S.D. 18. ...

25- y. S. D. N. Sello tercero Dos Reales. Habilitado provision
almt. por la Administracion de la Aduana
maritima de Monterey de la Alta California
para los años de mil ochocientos treinta y
cuatro y mil ochocientos treinta y cinco.
Tejueloa A. Ramirez

Y. Ayuntamiento

56-1- La comision de terrenos baldios ha visto la
solicitud que hace el C. Cruz Servantes para
q. se le conceda el parage nombrado S. Joaquin
cuyo expediente paso a informe a esta corpora
cion y en cumplimto al supor. decreto de 22
del pp. do informa: q. el interesado obtiene los
requeritos prevenidos para ser atendido en su
solicitud que el terreno q. pretende no esta com
prendido en las veinte leguas limitrofes y oi en
las literales q. espresa la ley de 18 de A. g. de
1824: que es de temporal y abrevadero y q. si ome
pertenece a la Misión de S. Juan B. Por lo
espuesto presenta a la deliveracion de este Y.
Ayuntamnt. la siguiente proposicion.
Puede concederse al C. Cruz Servantes el pa
rage nombrado S. Joaquin si no hay otro
por la mision de S. Juan Bautista a quien
pertenece.

Monterey Octubre 5 de 1839.

José Joaquin Gomez # Miguel Ariza

S. S. D. N. Monterey Oct. 10 de 1839.

En sesion de este dia aprovi el Y. Ayuntamiento
de esta Capital el antecedte dictamen y se a
cordo pase el expedte al mayordomo de S. Juan
Bautista en cumplimto: del ap. decreto q. an
tecede.

Dav. C. Spence.

José Maria Maldonado. Cño.

Pueblo de S. Juan Bautista Obre 13. 1835.

Puede adjudicarsele el sitio q. pretende el
interesado del parage de San Joaquin a las
lomas sin tocar al Roblar q. es don de Agosto
el Ganado de esta Misión.

José Tiburcio Castro.

Monterey Obre 21 de 1839.

Pase al Alcalde de esta Capital para

q. S. D. N. Sello tercero Dos Reales. Habilitado provisionalm.

por la Administracion de la Aduana Maritima de Monterey de la Alta California, para los años de mil ochocientos treinta y cuatro y mil ochocientos treinta y cinco.

Castro.

Angel Ramirez

quien la parte de Cruz Berantes producera una informacion de tres testigos idoneos q^{se} sean interrogados sobre los puntos siguientes 1.^o Si el interesado es C^{no} Mexicano por nacimiento si es casado y tiene hijos y si es de buena conducta. 2.^o Si el terreno q^{se} pretende pertenecer a la propiedad de algun particular corporacion o Pueblo si es de regadio, temporal o abrevadero si q^{se} estension tendra. 3.^o Si tiene bienes de campo con q^{se} poblarlo o posibilidad de adquirirlos. Eba cuadas estas diligencias vuelva el expediente p^{ra} su resolucion. El Sr. D. Jose Castro vocal de la Coma Diputacion Territorial e Jefe Politico interino de la Alta California asi lo mandó decreto y firmo. Day fei. Jose Castro.

Jefe del Castillo Secreteorio

Monterey Enero 14 de 1836.

Derecho \$4/ Notifiquese al interesado en este presente los testigos que se han de examinar sobre los puntos q^{se} se contrae al superior decreto q^{se} antecede recivase la informacion que se pide y concluida devielvase el expediente al D^o Jefe sup^r Politico para los efectos que haya lugar. Asi yo Quien Jose Ramon Bohada Alcalde Constitucional en la demarcacion de este Ayuntamiento lo decreté, mandé y firmé con los de Asistencia.

J.

Jose R. Bohada // Jose Maria Maldonado

Jose Antonio Romero. De Asa^a

En la fha presente Cruz Berantes, se le notifico el auto q^{se} antecede y entendiolo dijo: lo que y q^{se} presenta por testigos a los cu^l Juan Cisneros Pacheco, Jose Maria Herrera y Juan de Javier Castillo, y no firmo p^{ra} no haberlo hize yo y los de Asa^a

M. Bohada.

Jose M^a Maldonado. D^o Asa^a

Jose Antonio Romero. De Asa^a

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11. S. D. R. Dello Tercero Dos Reales: Habilitado provisionalmente por la Administracion de la Aduana Maritima de Monterey de la Alta California Oaxto.

Angel Ramirez

En el puerto de Monterey a los catorce dias del mes de Enero de mil ochocientos treinta y seis. presente el C. Franco Pacheco le recibí y ovi el juramento q. hizo en forma de derecho vajo el cual ofrecio decir verdad en lo que supiere y fuere preguntado y oviendola por su nombre, edad estado patria y Religion. Dijo: llamarse como queda dicho: que es casado, de cuarenta y cuatro años natural de la Capital de Jalisco y. C. A. R. (Preguntado) Por el tenor del interrogativo q. contiene el superior decreto de 4 de Dic. del año pp. Dijo. A lo 1.º Que el solicitante es hijo de. mejicano por nacimiento: que es casado y tiene hijos y es de buena conducta y responde a lo 2.º Que no pertenece a ningun particular el terreno que solicita, ni a Pueblo, ni Mision que es de temporal y abrevadero, y q. su extension puede ser de un poco mas de una y media legua y contestas. A lo 3.º Que si tiene bienes de Campo que lo dicho es la Verdad a cargo del juramento que tiene hecho en el que se

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12. S. D. Lafirmo y ratifico leida que le fue esta su declaracion y la firmo con migo y los de Aso.º

y

Lo testado no v.º) José R. Estada
Franco Perez Pacheco # José Maria Maldonado de Aso.º # José Antonio Romero. De Aso.º

En la misma fecha presente el C. José M.º Herrera se le recibí juramento que hizo en forma de derecho vajo el cual ofrecio decir verdad en lo que supiere y fuere preguntado, y oviendolo por su nombre, edad, estado, patria y relig.º.

Dijo: llamarse como dicho: que es casado, de cuarenta años, natural de Guanajuato y. C. A. R. Pregt.º por el mismo estilo que lo fue el primer testigo. Dijo. A lo 1.º Que si es nacido mejicano p.º nacimiento: que es casado tiene hijos y es de buena conducta: y responde a lo 2.º Que entiende q. no pertenece a ningun particular mision, ni pueblo el terreno que solicita: que es de temporal y abrevadero

13. J. D. R. Sello Tercero Dos Reales: Habilitado provisionalmente por la Administracion de la Aduana Maritima de Monterey de la Alta California para los años de mil ochocientos treinta y cuatro y mil ochocientos treinta y cinco.

Adsto:

Angel Ramirez

y su estension es de legua y media, y contesta a lo 1.º que sabe tiene ganado para poblarlo y bastantes caballos; y lo dicho es la verdad à cargo de su juramento que tiene hecho en el que se afirmo y ratifico leida que le fue en declaracion y la firmo con mi go y los de

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J. asst.

José R. Cortada # José M.ª Herrera.
José Maria Maldonado De asst.

José Antonio Romero De asst.

En la misma fha presente el Sr. Franc.º Ferrer del Castillo se le recivio juramento en forma de derecho por el cual oprecio decir verdad en lo que supiere y fuere preguntado y en dolo por su nombre estado, edad patria y religion: Dijo: se llama como queda referido; que es soltero de treinta

14. J. D. R. y dos años: su patria la Capital de Mexico y Catolico A. R. Pregta.º Por el Orden que lo fueron los dos antecedentes testigos dijo:

A lo 1.º que es mexicano por nacimiento, que es casado, tiene hijos, y es de buena conducta y responde. A lo 2.º que no pertenece à ningun particular mision ni pueblo el terreno que solicita: que es de temporal, y su estension poco menos de dos leguas: Y contesta: A lo 3.º

que tiene las dos circunstancias del tenor de la pregunta: que lo dicho es la verdad à cargo del juramento que tiene hecho en el que se afirmo y ratifico, leida que le fue esta declaracion y lo firmo con mi go y los de asst.

J.

José R. Cortada # Franc.º del Castillo Negrete
José Maria Maldonado. De asst.

José Antonio Romero de asst.

15. J. D. R. En la fha concluida la informacion. Sello Tercero Dos Reales: Habilitado provisionalmente por la Administracion de la Aduana Maritima de Monterey de la Alta California para

los años de mil ochocientos treinta y cuatro y mil
ochocientos treinta y cinco.

Castro Angel Ramirez
que se pide en el antecedente superior decreto
se devuelve el expediente Original al Sr. Se-
ñor Superior Politico en cumplimiento de lo man-
dado en auto de esta fha. Y para constancia
lo puse por nota of. rubrico.

M

Estada.

Monterey Abril 1^o de 1836.

Vista la peticion con que da principio este espe-
diente el informe de la autoridad municipal
i todo lo demas que se tubo presente y ver con
conformidad con las leyes i reglamentos de la
materia se declara dueño en propiedad del
terreno conocido con el nombre de Sr. Joaquin
al Sr. Cruz Servantes a Reserva de la aprova-
cion de la Coena Diputacion. El Sr. D. Ni-
colas Gutierrez Teniente Coronel Comandante
Gral e Inspector i Jefe Politico interino asi

16. S. D. R. lo mando decreto y firmo. de of. doy fe.

Nicolas Gutierrez

Jefe del Castillo Negro. Serio

En 31 de mayo paso a la comision de terrenos.

Maldonado Serio.

Coena Sr.

La Comision de Terrenos Valdivos impuesto del
Coepdt. of. se mando practicar a peticion del Ciudadano
Cruz Servantes del parage nombrado Sr. Joaquin
y no encontrando en el objecion alguno of. hasen
siendo en todo conforme al Art. 5^o del reglam.
de 21 de Noviembre de 1828. y a la Ley de 18 de Agosto
de 1824 opece a la deliveracion de V. C. la sigui-
ente proposicion.

17. S. D. R. Se aprueba la conecion hecha al Ciudadano Cruz
Servantes. del Parage nombrado Sr. Joaquin
en 1^o de Abril del presente año.

Monterey 6 de Julio de 1836.

José Joaquín Gómez. José C. de la
Barillo.

En 12 de Julio, volvió a la comision p.^a su re-
forma.

Maldonado.

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

I Samuel D. King Surveyor General of the United States for the State of California and as such now having in my Office and under my charge and control a portion of the Archives of the former Spanish and Mexican Territory or Department of Upper California do hereby Certify that the Seventeen preceding and hereunto annexed pages of tracing paper numbered from One to Seventeen inclusive and each of which is verified by my initials (S. D. K.) exhibit true and accurate copies of certain documents on file and forming part of the said Archives in this Office.

In Testimony whereof I have hereunto signed my Name Officially and affixed my private Seal (not having a Seal of Office) at the City of San Francisco Cal. this 15th day of March 1852.

Saml. D. King
Surv: Gen: Cal.

Filed in Office March 22nd 1852

Geo. Fisher Secy

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Jurisdiction of Monterey Year 1835
 Proceedings relative to the place called "San Joaquin"
 Solicited by Don Cruz Cervantes

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A
 Translation of

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To his Honor the Political Chief
 Citizen Cruz Cervantes a resident of this Territory with
 due respect to your Honor represents that owning two
 hundred head of neat Cattle, and being anxious to
 dedicate myself to the rearing of the same, as the
 most productive branch of business in this Soil I am
 in want of a suitable place to carry my undertaking
 into effect. For this purpose I would request that in
 compliance with my petition you may be pleased to
 grant me the possession of the place called San Joaquin
 (as near as I am that said place is unoccupied with
 respect, and consequently vacant (vacant) said land
 being bounded by Santa Ana which is on the South,
 San Felipe on the North, the plain of San Juan on
 the West, and by the hills of the said place on the
 East and is of two leagues in length by one in
 width, the paper plan of which I shall make and
 present it with the corresponding description to this
 Government, in order that with all the usual forms
 the possession of the aforesaid place may be ad-
 judged to me.

Wherefore I request that your Honor be pleased to
 order it as I have petitioned and for which I shall
 receive favor

Monterey Sept. 11. 1835

At the request of the interested party, who knows
 not how to sign I hereby affirm my name

José Pablo Díez

(Marginal decree) Monterey Sept. 22^o 1835

In conformity with the Law on the Subject let
 the Ayuntamiento of this Capital report whether
 the interested party in this instance proposes the request
 site qualifications to be considered in his petition
 Whether the land he claims is within the 20 leagues or
 10 literal leagues mentioned in the Law of August
 18th 1834. Whether the Land is negative, temporal
 or containing watering places. Whether it belongs to
 any Mission Corporation or Pueblo (Settlement) with
 any thing else that may serve to elucidate the matter
 after which shall have been accomplished let this
 Expediente be transmitted to the Mayorazgo of San

Juan Bantista, that he may steal whatever he may deem relevant in this parchment.

Don Don Jose Casto, Senior Member of the Excellent Intercal Deputation & Political Chief of the same thus did command decree and sign all which I attest
Jose Casto

J^o del Castillo Regente. Secy

To the Honble. Superior Chief

Citizen Cruz Corvantes with due respect to your Honor represents, that having officed in my last petition to present a map of the place called San Joaquin agreeably to the Decree upon the Subject, I do so now in this accompanying map, and that in your acceptance of the same in all due form of Law (I having complied with my requirements) you may direct that after the Conception of the Land & Abolition, possession of the same may be given me with all such legal forms as the case may require. The demarcation of the limits of said place is a right line of one league and a half in length drawn from North to South from the dry creek opposite that of San Felipe until it passes a little marsh in the direction of the hills of Santa Ana; and one league from East to West from the plain of San Juan as far as the high hills of San Joaquin, the said dry creek separating the Land I ask, from the Rancho of San Felipe; under such Decree I request your Honor to Order as I have petitioned which being agreeable to justice, I shall also receive as a favor. Monterey Sept. 20th 1835

At the request of Cruz Corvantes I hereby sign the same for him

Manuel M. Gonzales

Sept 3^o 1839 In Session of this day's date, it was referred to the Committee on public Lands
D^o S. Spence

Jose Maria Maldonado Secy

To the Illustrious Ayuntamiento.

The committee on public lands have seen the petition presented by citizen Cruz Corvantes for the place called "San Joaquin" the proceedings on which were referred to this Corporation, and in compliance with the Superior decree of the 22^o last past, they report, that the interested party proposes the request, to be heard in his petition. The land he asks for is not within

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the 20 border leagues, but it is within the 10 literal leagues mentioned in the Law of Dec. 18th 1834. The same Land is temporal and contains watering places, and is known to belong to the Mission of San Juan Bautista. For the reasons above expressed they present to the deliberation of this Illustrious Ayuntamiento the following proposition -

The place called San Joaquin may be granted to Citizen Cruz Cervantes, if the Mission of San Juan Bautista to whom it belongs has no objection -

Monterey Dec. 31st 1839
Jose Joaquin Gomez
Monterey Oct. 10th 1839

Mequel Avila

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In their Session of today, the Illustrious Ayuntamiento of this Capital approved the preceding Opinion and they agreed to refer the Expediente to the Mayordomos (Stewards) of San Juan Bautista in compliance with the preceding decree

Don J. Spence Jose Maria Malcondado

Pueblo of San Juan Bautista Oct. 13th 1835
The place of San Joaquin petitioned for by the interested party, may be adjudicated to him as far as the hills without touching the Oak grass which is the summer pasture for the cattle belonging to the Mission

Monterey Dec. 4th 1839

Jose Teodoro Castro

Let the same be referred to the Alcalde of this Capital before whom on the part of Cruz Cervantes shall be produced an information of three proper witnesses who shall be interrogated upon the following points 1st Whether the petitioner is by birth a Mexican Citizen - Whether he is married and has children and whether his conduct is good 2nd Whether the land he petitions for is the property of any private individual Corporation or Pueblo, whether the Land is irregular temporal or containing watering places and what is its extent. 3rd Whether he owns any stock to put there on, or has the means of getting it. After accomplishing which requirements let the proceeding go be returned for a resolution therein. Don Don Jose Castro Senior Member of the Excellent Territorial Deputation and Political Chief ad interim of Upper California thus used command decree and sign

Negrete. Secy

Fees \$4.00

Let the interested party be notified that the witnesses will be examined and the three points specified in the Superior decree. Let the information asked be accepted after which, the proceedings shall be returned to the Superior Political Chief for such purposes as may be deemed proper.

Thus did I Jose Ramon Estrada Constitutional Alcalde of the District of this Illustrious Ayuntamiento decree command and sign together with my assistants. Jose R Estrada

Asst. Jose Maria Maldonado. Asst. Jose Antonio Romero
On the same day, Cruz Cuantes being present was notified of the preceding decree which being heard, he said he understood it, and that he presented as witnesses, Citizens Francisco Pacheco, Jose Ma Herrera & Francisco Javier Custello, not signing because he knows not how, I did so together with my assistants

Estrada
Asst. Jose Maria Maldonado. Asst. Jose Antonio Romero
At the port of Monterey on the 14th day of January 1836 Citizen Francisco Pacheco being present, I the Alcalde administered the Oath in all due form of Law, under which he offered to state the truth to the best of his belief and upon the points he might be interrogated. Having been interrogated as to his name age condition, country and religion; he said that his name was as has been stated, that he is married, is forty four years old, is a native of the Capital of Talisco and an Apostolic Roman Catholic.

Being asked after the tenor of the Interrogatory contained in the Superior decree of Dec. 4th of the year last past, he said 1st That he the petitioner is a Mexican Citizen by birth that he is married and has children and is of a good conduct.

2nd That the Land solicited belongs to no private individual, pueblo or Mission - that it is temporal & contains irrigating places and in extent it may be a little more than one league and a half. 3rd That he is the owner of Stock. That the aforesaid is the truth under the Oath he has taken, which he affirmed and ratified after this his declaration had been read to him, signing the same together with myself and my assistants.

Jose R Estrada

Franc. Perez Pacheco

Asst. Jose Maria Maldonado. Asst. Jose Antonio Romero

On the same day, Citizen Jose Maria Herrera being

This day the information asked in the preceding Superior decree being concluded let the original Expediente be returned to the Superior Potestial Chief in compliance with the decree issued this day. I witness whereof I made a note of it and signed it with my Verbe

Estrada

Monterey April 1st 1836

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Having examined the petition heading these proceedings - the Report of the Municipal Authority and every thing bearing on the case, in conformity with the Laws and Regulations in the matter, Citizen Cruz Servantes is hereby declared owner in fee of the parcel of Land known by the name of San Joaquin subject to the approval of the Excellent Deputation
 Senior Nicolas Gutierrez "Lieut Col" Commandant General, Inspector and Potestial Chief ad interim dec. these Command Decree and sign which I attest
 Nicolas Gutierrez. Fidel Castello Regente - Secy
 On the 31st of May this was referred to the Committee on Lands (Signed) Maldonado Secy

The Committee on vacant Lands informed of the Expediente ordered at the instance of Citizen Cruz Servantes who solicited the place called "San Joaquin" finding no objection whatever against it and being all in conformity to the 5th Article of the Regulations of the 21st of Nov. 1828 and agreeably to the Law of August 18th 1834 offer to your Excellency's deliberation the following propositions

They approve of the Conception made to Citizen Cruz Servantes of the place called San Joaquin on the 1st of April of the present year

Monterey July 6th 1836

Jose A de la Guerra y Carrillo

Jose Joaquin Gomez

On the 13 of July it was returned to the Committee for its reformation. Maldonado Secy

Translated by J. G.

I certify the foregoing to be a true and correct translation from the Spanish on file in this Office
 San Francisco March 22nd 1852

Geo. Fisher Secy

Filed in office March 22nd 1852

Geo. Fisher Secy

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Titulos del Rancho

de

San Joaquin

Rosa Morada.

A

Document has
been annexed to the
Deposition
of D. Spence

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Cello primero seis Pesos. Habilitado provisionalmente por la Administracion de la Aduana Maritima de Monterey de la Alta California para los años de mil ochocientos treinta y cuatro y mil ochocientos treinta y cinco.

Figueras

A. Ramirez

Revalidado para el bienio de 1836 y 1837.

Gutierrez

A. Ramirez

Nicolas Gutierrez Teniente Coronel de Caballeria permanente, Comandante General e Inspector y Jefe superior Politico interino del Territorio de la Alta California.

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§ 1.º Por cuanto el Sr. Cruz Servantes Mexicano por nacimiento ha pretendido para su beneficio personal y el de su familia el terreno conocido con el nombre de Sr. Joaquin cuyos linderos son al Norte Sr. Felipe, al Sur Sr. Ana, al poniente el llano de Sr. Juan y al Oriente las Lomas del mismo sitio; practicadas previamente las diligencias y averiguaciones segun lo dispone lo p.º las leyes y Reglamentos de la materia, usando de las facultades que me son conferidas en decreto de este dia y a nombre de la Nacion Mexicana he venido en concederle el terreno mencionado declarandole la propiedad de el por las presentes letras a reserva de la aprobacion de la Exma. Diputacion y bajo las condiciones siguientes.

Des 2.º p.º

1.ª Que se cometara a las que estableciere el Reglamento que se ha de formar para la distribucion de terrenos Valdios y que entretanto ni el agraciado ni sus herederos podran dividir ni enagenar el que se les adjudica, ni poner censo vinculo, fianza, hipoteca, ni otro gravamen aunque sea por causa piadosa ni pasarlo a manos muertas.

2.ª Podra cercarlo sin perjudicar las heredadas, caminos y servidumbres, destinandolo al uso o cultivo que mas le acomode, pero dentro de un año a lo mas fabricara casa y estara habitada.

3.ª Solicitara del Juez respectivo que le di

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2 Map.

posesion juridica en virtud de este despacho por el cual se demarcaran los linderos en cuyos limites pondran à mas de las mojoneras algunos arboles frutales ò silvestres de alguna utilidad.

4^a El terreno de que se hace donacion es de dos sitios de ganado Mayor segun el diseno que corre en el expediente. El Juez que diere la posesion lo hara medir conforme à Ordenanza quedando el sobrante que resulte à la Estacion para los usos convenientes

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5^a Si contravinere à estas condiciones perdera su derecho al terreno y sera denunciabile por otro.

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En consecuencia mandos que sirviendole de titulo el presente y teniendose por firme y valedero, se tomara razon de el en el libro que corresponde y se entregue al interesado para su resguardo y demas fines.

Dado en Monterey à primero de Abril de mil Ocho cientos treinta y Seis.
Nicolas Gutierrez

Jefe del Castillo Negro. Su
Queda tomada razon à fojas 103 y señalada
Dio \$10) con el Numero 99 en el libro que corresponde
y obra en la Secretaria de mi Cargo.
Monterey 2 de Abril de 1836.
Castillo.

Here follows Map

Sello Cuarto una Cuartilla.

Habilitado provisionalmente por la Aduana maritima del puerto de Monterey, en el Departamento de las Californias, para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

Alvarado

Antonio M^a. Osio.

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Manuel Jimeno Secretario del Gobierno del Departamento de las Californias

Certifica que el diceño que antecede, el cual está rubricado de mi mano es igual al que corre Original agregada al Expediente que existe en la Seria de mi cargo perteneciente à D^{no} Cruz Bervantes, del parage nombrado San Joaquin. Y para los fines que le convengan al interezado le estiendo la presente en Monterey de nueve de Febrero de mil ochocientos cuarenta y uno.

Man^l. Jimeno.

Sello Cuarto Una Cuartilla

Habilitado provisionalmente por la Aduana maritima del puerto de Monterey, en el Departamento de las Californias, para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno

Alvarado

Antonio Maria Osio.

Sor Juez de Paz Constitucional.

San Juan de Castro Feb^{ro}

12 de 1841. Por presentado y admitido; procedase à dar la posesion q^e se solicita à cuyo efecto se señale el Juevez 18 del corriente citense à los colindantes p^a dicho dia y nombre previamente medidores y contadores à quienes se les hará saber p^a en acep^{ta}cion y juramento. Así yo el Juez de 1^a Inst^o lo decrety firmè. Am^{ar}. Cas^{ta}ñares

Cruz Bervantes Ciudadano Mexicano y vecino de la demarcacion del este Pueblo, ante la justificacion de V. como mas haya lugar en D^{no}: digo que habiendo obtenido la Concepcion propia del terreno conocido con el nombre de San Joaquin, ocurro ante V. con el fin de que se ordene darme la posesion juridica conforme esta prevenido en el Artículo tercero de cuyo titulo que se le espicio con fecha de primero

de Abril de mil ochocientos treinta y seis, el cual debidamente acompañado para que obre en los efectos deseados.

P. O. J. @ V. Suplico se digne ponerme en la posesion que solicito de lo que recibire merced y justicia Monterey Febrero 10 de 1841.

Bruz Verbantes

En la misma fecha presente el B. Bruz Verbantes se le notifico el auto qf. antecedente y entendido dijo lo Oye y se da por citado firmandolo con mi go y los de mi As^o.

Juan Mig^o. Amzar

M. Castañares As^o.

En la misma fecha se libarou las boletas de comparendo en cumplimiento de lo mandado en el auto antecedente y p^a conot^a de la diligencia practicada lo Anoto y rubrico.

Man^l. Castañares. As^o.

Dello Cuarto Una Cuartilla.

Habilitado provisionalmente por la Aduana Maritima del puerto de Monterey, en el Departamento de las Californias, para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

Alvarado

Antonio M^o. Osio.

Al pie de la Loma qf. ve al Norte en el Rancho de Sr. Joaquin (a) rosa morada a los diez y ocho dias del mes de Febrero de mil ochocientos cuarenta y uno presentes los ciudadanos Francisco Pacheco colindante p^o con Rancho de San Felipe y el Cuid. Man^l. Larios p^o el Oyo de Santa Anna. Lo el Juez de 1^a instancia del 1^o Distrito del Departamento de las Californias notifique a los expresado colindantes qf. se hayan presentes el Auto anterior y entendidos lo firmaron con mi go y lo de asistencia los qf. Supieron. mi Amzar mi

Man^l. Castañares As^o.

Man^l. Larios

Francisco Perez Pacheco.

En el mismo parage, dia, mes y año yo el referido Juez en cumplimiento del decreto de Doce del corriente Febrero, presentes los citados colindantes p^a la medicion del Terreno oñalamento de Linderos y posesion juridica nombre de mediciones a Bruz Perez y Juan Espinosa

quienes previa la aceptacion y juramento procedieron al desempeño de su encargo: asi yo el mencionado Juez lo decreté y firmé con los de Asistencia.

Anzar.

Manuel Castañares. Ass^o: Man^l: Larios.
 José Man^l: Pargos. # Franc^o: Perez Pacheco.
 En la misma fecha y el expresado paraje se les notifico el nombram^{to} hecho en los C. C. Cruz Perez y Juan Espinosa (C. Dello Cuarto Una Cuartilla) Habilitado provisionalmente por la Aduana Maritima del puerto de Monterey, en el Departamento de las Californias, para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

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Alvarado Antonio Maria Osio
 y dijeron aceptaban y aceptaron dicho encargo y juraron p^r: Dios nuestro Señor y la Señal de la Sta Cruz el cumplir fiel y legalm^{te} a todo su leal saber y entender; sin perjuicio contra persona alguna y no firmaron p^r: no saber y lo hizo yo el presente Juez con los de As^o.

Anzar. Man^l: Castañares. Ass^o:
 Franc^o: Perez Pacheco # Man^l: Larios
 José Man^l: Pargos.

En continente yo el referido (Alca) Juez mandé traer el cordel con que se han de medir las tierras y q^d se mida de cincuenta varas y en presencia de los colindantes: lo tomaron y con una vara de medir usual mexicana, teniendo en la mano, midieron cincuenta varas para hacer la referida medida; y lo firmo con los de asistencia.

Anzar.

Man^l: Larios # Man^l: Castañares Ass^o:
 José Man^l: Pargos.

En el mismo paraje, mes, y año nombré p^a contadores, a los C. C. Benito Carranza, y Man^l: Pargos quienes previa la aceptacion y juramento procedieron al desempeño de su encargo. Asi lo decreté mandé y firmé con los de mi Asistencia.

Anzar # Franc^o: Perez Pacheco.
 Man^l: Larios # José Man^l: Pargos:
 Man^l: Castañares. Ass^o.

En el mismo lugar mes día y año a las nueve de la mañana yo el presente Juez mandé

à los medidores (Cello Cuarto una Cuartilla)
Habilitado provisionalmente por la Aduana
Maritima del Puerto de Monterey, en el Depar
tamento de las Californias, para los años de
mil ochocientos cuarenta y mil ochocientos
cuarenta y uno.

Alvarado Antonio Maria Coio
nombrados se pongan p^a las medidas de tierras
que se han de hacer al ciudadano Cruz Berwan
tes y en el mismo punto desde el pie de la ya men
cionada Loma y en el lado del Norte hasta la
punta del Sanjon llamado del Tequesquite
hay cien cordeles de cincuenta varas y desde
el mismo Sanjon se midieron al ciento doce
cordeles de cincuenta varas, habiendose
convenido asi por Berwantes y su colindante
Larios, punto donde se vera poner una moja
nueva, y desde esta que queda al N. le servira
de lindero el Arroyo Seco, concluyendo su li
tuo en el portezuelo de los picachos y siendo
el terreno irregular, seran dos sitios poco o
mas o menos de ganado mayor. Y para
const^a lo firmo con los de mi asist^a.

Juan Mig^e Anzar
Man^l Castañares As^o Man^l Larios
Franc^o Perez Pacheco. / José Manuel Pargao
En el Rancho conocido con el nombre de S^{ra}
Joaquin (a) Rosamorada / que es el punto
centrico del terreno medido. Yo el Juez de 1^a
Instancia del 1^{er} Distrito del Depar tamen
to de las California à los diez y ocho dias del
mes de Febrero de mil ochocientos cuaren
ta y uno, despues de practicadas las medidas
del mencionado Rancho presente los colindan
tes b^{os} Francisco Pacheco, Cruz Berwantes
y Manuel Larios, que fueron conformes con todo
lo mas q^e ver conrno, mandè entrar en pose
cion del Rancho al b^o Cruz Berwantes, bajo
las medidas citadas y formalidades de cos
tumbre en casos semejantes; lo que verifico
arrancando yerbas y haciendo demonstra
ciones como dueño del terreno q^e se le ha da
do en posesion y propiedad cuya validacion
la autorizo y firmo con los de mi asistencia

y los colindantes.

Juan Mig^e. Anzor
Man^o. Larios # Franc^o. Perez Pacheco

Sello Cuarto una Cuartilla.

Habilitado provisionalmente por la Aduana
Maritima de Monterey para los años de 1839
y 1840.

Alvarado

Antonio M^a. Osio.

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Seal

Habilitado provisionalmente p^r el
año de 1821. p^r no haber del bienio prest^o
Arias. José Manuel Parga.Man^o. Castañares. Ass^o.San Juan de Castro Feb^o. 20 / 1821.Tomese razon en el cuaderno de posesiones y
devuelvase original este Expediente al In-
teresado p^a q^o le sirva de Título, así lo el
Jefe lo determine, mandè y firmè con los de
mi asistencia. AnzorMan^o. Castañares. Ass^o.En la misma fecha se tomo razon à foja 1^a del
libro respectivo y se devolvió el Expediente en
10 fojas utiles, en cumplimiento del antecedente
auto: y p^a constancia lo anoto y rubrico.Al Juzgado de mi cargo le corresponden p^r
los derechos causados, en la practica de las
anteriores diligencias los veinte y seis p^r
en corr^o q^a aparecen en la suma de la siguiente
cuenta.

Sello Cuarto una Cuartilla.

Habilitado provisionalmente por la Aduana
Maritima de Monterey para los años de 18
39. y 1840

Alvarado

Antonio M^a. Osio

Seal

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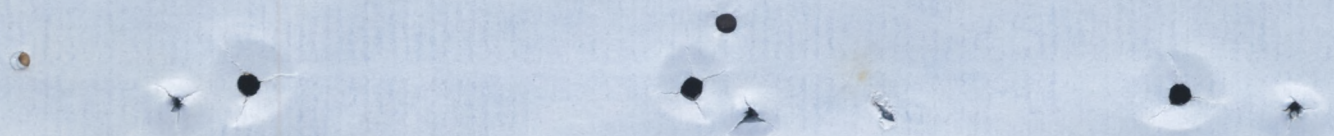
Por la presentacion de un Escrito con recaudos y su proveido.	1.	0.	0
Por tres notificaciones dentro y fuera del Juzgado.	2.	3.	0
Por tres notas @ 2 R. ^o	1.	4.	0
Nombramiento de Peritos en aceptacion y juramento.	1.	5.	0
Diligencia del reconocim ^{to} del cord.	0.	4.	0
Posecion de un Acto.	3.	0.	0
Por dos Actos de substanciacion	2.	0.	0
Toma de Razon.	0.	6.	0
Por 16 leguas de ida y vuelta.	12.	0.	0
Por cinco p ^{tes} escritas @ 3 @	1.	4.	0
Suma.	26.	5.	0

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Juan Mig^l. Anzar.

Filed in Office Feby 2nd 1852.
Geo. Fisher. Secy

LYON



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Translation C.

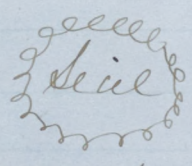
(Translation)

First Seal

Authorized provisionally by the collector of the Maritime Custom House of Monterey for the years 1834 & 1835.

(Signed) Figueroa (Signed) A. Ramirez

Validated for the biennial years of 1836 & 1837
Nicolas Gutierrez Lieut. Colonel of the permanent Cavalry Commandant General Inspector & Superior Political Chief ad interim of the Territory of Alta California.



Fees \$20.

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Whereas citizen Cruz Leovantes a Mexican by birth has applied for his own benefit and that of his family for the parcel of Land known by the name of San Joaquin, bounded on the North by San Felipe on the South by Santa Ana on the West by the plain of San Juan and on the East by the hills of said place: and whereas all the requirements of the Laws and regulations in the matter have been complied with. Now by virtue of the authority in me vested, I have thought proper, by a decree of this day's date and in the name of the Mexican Nation to grant to him the aforementioned parcel of Land declaring the same to be his property by these letters patent subject to the approval of the Excellent Deputation & under the following conditions

1. He will submit to such conditions as shall be made by the Regulations hereafter to be established for the distribution of vacant Lands and that meanwhile neither the grantee nor his heirs shall divide nor alienate that which is assigned to them, nor shall they subject it to rent or real bond mortgage or to any encumbrance whatsoever, even if it shall be for charitable purposes nor convey it into matrimony

2. He may fence it without obstructing crossings roads and structures putting it to such uses and culture that he may deem best, but within one year at furthest, he shall build there a house which shall be inhabited.

3. He shall solicit of the respective Judge to give him judicial possession by virtue of this patent by whom the boundaries shall be marked, at the limits of which, besides the Land marks there shall be set some fruit trees or else wild ones of some

useful up-

4. The Land of which donation is made is of two sitios de ganado Mayor (2500 leagues) according to the plan annexed to the proceedings. The judge who may give possession will cause it to be measured agreeably to Ordinance leaving the excess (sobrante) which may result to the Nation for such purposes as may be deemed convenient.

5. If he should contravene these conditions he shall lose his right to the Land which may be denounced by any other person.

Wherefore I command that holding this as firm and valid title, the same be entered in the corresponding Book, and be returned to the interested party in his own security and further ends.
Given in Monterey on the 1st of April 1836.

Geo. Bustillo Negrete Secy. Nicolas Gutierrez
Entered in folio 103 marked No 99 in the correspondence Book in the Secretary's Office under my charge
Monterey April 2nd 1836

Fres 7/10-

Castillo

Fourth Stamp. On Cuartella

Legalized provisionally by the collector of customs in Monterey in the Department of the California for the years 1840 and 1841

(Signed) Alvarado (Signed) Antonio Maria Osio
Manuel Jimeno Casarin Secretary of the Government of the Department of the California
I certify that the foregoing plot marked with my scratch is similar to the original annexed to the Record of Proceedings on file in the office under my charge, belonging to Cruz Cervantes of the place called San Joaquin; and for the purposes that may be convenient to the party interested I give this present in Monterey 9th Febry 1841

(Signed) Manuel Jimeno

Fourth Stamp. One Cuartella

Legalized provisionally by the collector of the customs of Monterey in the Department of the California for the years 1840 and 1841

(Signed) Alvarado (Signed) Antonio Maria Osio
To the Constitutional Justice of Peace
Cruz Cervantes, Mexican citizen and a resident of the precinct of this Town, in due form of law to you represents; that having obtained the proper

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grant of the tract of Land known by the name of San Joaquin, I appear before you for the purpose that you will be pleased to give me the legal possession of the same according to the provision of the third article of the title issued on the 1st April 1836. which I here by duly accompany, for the desired purposes. Therefore I solicit you, to be pleased to put me in possession, which I ask, by which I will receive favor and justice -

Monterey February 10th 1841

(Signed) Cruz Cervantes

San Juan de los Rios Feb-13th 1841

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This Petition being presented, it is received, let the possession solicited be given, for which purpose Thursday the 18th instant is set apart, let the contemnerous Neighbors be summoned to appear on that day and let the Measurers & tally men be previously appointed, who shall be notified of their appointment for their acceptance and taking the Oath of Office. Thus I the Judge of the first instance, have decreed and signed.

(Signed) Anzar

Asisting Witness M. Custanarez

On the same day being present Cruz Cervantes was notified of the preceding Decree and after having heard it read said that he understood it and that he consents himself notified and signed this with me & my assisting witness (Sig) Juan Mig. Anzar

Asisting Witness Manl. Custanarez

On the same day the Summons were issued for the appearance of the parties as provided in the preceding Decree; which I note here as one of the acts & mark it with my signature

(a signed)

Asisting Witness Manl. Custanarez

At the foot of the hill on the North side in the Rancho of San Joaquin (a) Rosa Morada (The purple Rose) on the 18th day of the Month of February 1841 being present Citizens Francisco Pacheco adjoining with his Rancho of San Felipe and the citizen Manuel Larios with his Rancho of Santallma & the Judge of the first instance of the first District of the Department of the Californias have notified the adjacent contemnerous Neighbors who are present of the foregoing decree, and after having it understood they signed these presents with me and my assisting witness, who could not sign. Anzar

(Signed) Manuel Castanarez. " Manuel La Rios
Jose Manuel Vargas - Feo Perez Pacheco

At the same place same day, month and year, I the
aforesaid Judge, in compliance with the Decree of the
10th of the present Month of February, the aforesaid
contiguous Neighbors being present, for the purpose
of measuring the said land, marking out its
boundaries and giving legal possession of the same
have appointed Cruz Perez and Juan Espinoza
measurers, who having first accepted the appoint-
ment and taken the Oath of Office entered on the
discharge of their duties. Thus I the aforesaid
Judge have decreed and signed with my as-
sisting Witnesses - (Signed) Anzar

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(Signed) Manuel Castanarez " Manuel La Rios
Jose Manuel Vargas. Feo Perez Pacheco

On the same date at the same place Citizens Cruz
Perez & Juan Espinoza were notified of their
appointment, and stated that have accepted &
do accept the said appointment and have taken
the Oath by the Lord our God & the sign of the
holy cross to discharge faithfully and according
to law their duties to the best of their knowledge
and belief without fraud upon any person and
they have not signed this, not knowing how to write
and I the present Judge have signed with my
assisting Witnesses (Signed) Anzar

(Signed) Ass. Witnesses Manuel Castanarez " Manuel
Larios - Feo Perez Pacheco. Jose Manuel Vargas
Immediately I the aforesaid Judge, have caused the
rope to be brought, with which the land is to be
measured, and to measure off fifty varas of it
and in the presence of the contiguous Neighbors
it was taken and with the usual Mexican
measuring vara, holding it in the hand, meas-
ured off fifty varas of the same, for the aforesaid
measure and I signed this with my assisting
Witnesses. (Signed) Anzar

(Signed) Ass. Witnesses Manuel Larios
Jose Manuel Vargas. Manuel Castanarez

On the same place month day and year I appointed
Benito Laranza and Manuel Vargas Surveyors
who having first accepted their appointments and
taken the Oath of Office entered upon the discharge
of their duties. Thus I have decreed and signed

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with my assisting Utenepes (Signed) Anzar
 (Signed) Assj Utenepes. Franco Perez Pacheco. Manuel
 Larios. Jose Manuel Vargas - Manuel Castanares
 On the same place, month day and year at nine
 O'clock in the morning I the aforesaid Judge directed
 the measurers appointed to prepare for the measurement
 of the Lanzas, to be made for Cruz Corvantes &
 at the same point from the foot of the aforesaid hill
 and on the North side to the point of the deep ditch
 (Gouge) called "Seguesquito" There are one hundred
 varas of 50 varas, and from the same deep ditch
 there measured to the South 112 varas of 50 varas
 and, agreement having been made between Corvantes
 and his adjoining neighbor Larios of the point where
 the land mark is to be placed, and from thence
 which is to the East the "Arroyo Seco" (Dry creek)
 shall serve as the boundary completing his "sitio" in
 the Portezuelo de los Picachos (the gap of the sharp
 pointed hills) and the land being of unequal
 form there may be two leagues (sitios) more or less

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In testimony whereof I sign with my assisting Utenepes
 (Signed) Juan Mej. Anzar
 (Signed) Assj Utenepes (Signed) Manuel Castanares
 Manuel Larios Fr. Perez Pacheco. Jose Manuel Vargas
 In the Rancho known by the name of San Joaquin
 (a) Rosar Maraca which is the central point of the
 land measured. I the Judge of the 1st Instance of the
 1st District of the Department of the Californias
 on this 18th day of the month of February 1841
 after having concluded the measurement of the aforesaid
 Rancho, being present the contiguous neighbors,
 Citizens Francisco Pacheco, Cruz Corvantes
 and Manuel Larios, who agreed to every thing that
 was most expedient to be done, have caused Citizen
 Cruz Corvantes to enter into the possession of the Rancho
 with the aforesaid measurement and the formalities
 customary on such occasions, which here are
 given by pulling up grass and making demonstrations
 as the owner of the Lanza of which possession &
 ownership was given to him; the validity of which
 I authenticate and sign with my assisting Utenepes
 and with the contiguous neighbors -

(Signed) Juan Mej. Anzar
 (Signed) Franco Perez Pacheco Manuel Larios
 Manuel Castanares Jose Manuel Vargas

San Juan de Puerto Rico Feb 20th 1841

Let a Regista of this Record of Proceedings be made in the respective Book of Possessions and let the Original be returned to the party interested that it may serve him as a title - Thus I the Judge have decreed, ordered and signed with my assisting witnesses -

(Signed) Manuel Custanarez

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On the same day a Regista was made on folio 1 of the respective Book and the Record of Proceedings was returned on 10 written folios in compliance with the preceding decree and in evidence thereof I note and mark the same with my signature (a signed)

To the Court under my charge for the foregoing proceedings had, are due the twenty six dollars and five reales which appear in the aggregate of the following account, to wit:

" For presentation of a petition with decrees thereon	\$ 1.0.0
" The summons within and without the Court	2. 3
" 3 Notices or certificates @ 4 Rls. ea.	1. 4
" The appointment of measurers & tally men and their acceptance and oath of office	3 1. 5
" Adjusting the Cnd	" 4
" Giving possession in one Act.	3.
" 2 Decrees of final proceedings	2
" Registry	" 6
" Mileage 16 leagues going and coming	12.
" In writing 5 folios @ 3 Rls.	1. 7
Aggregate	<u>\$ 26.5</u>

(Signed) Juan Manuel Anzures

I certify the above to be a correct translation from the Original Spanish, of which a correct copy is on file in this office
March 11th 1852 Geo. Fisher Secy

Translated and filed in Office March 11. 1852
Geo. Fisher
Secy

Nicolas Gutierrez Ferriente Coronel comandante G.^l
i Inspector i Jefe Politico de la Alta California.

L.S.B.K.

Por cuanto el C.^{no} Cruz Cervantes, Mexicano por nacimiento ha pretendido para su beneficio personal y el de su familia el terreno conocido con el nombre de San Joaquin cuyos linderos son al N. San Felipe, al S. Santana al P. el llano de S.^{to} Juan al O. las lomas del mismo sitio: practicadas previamente las diligencias y averiguaciones convenientes segun lo dispuesto por las leyes i reglamentos de la materia, usando de las facultades que me son conferidas en decreto de este dia i a nombre de la Nacion Mexicana he venido en concederle la propiedad de el por las presentes letras a reserva de la aprobacion de la E. Dipon i bajo las condiciones siguientes.

PJ.
Grant of land.

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1.^a Que se sometera a los que estableciere el reglamento que se ha de formar para la distribucion de terrenos volados y que entre tanto ni el agraciado ni sus herederos podran dividir ni enajenar el que se le adjudica, imponer censo, vinculo, finca, i otro gravamen aunque sea por causa piadosa ni pasarlo a manos muertas.

2.^a Podra ser usado sin perjudicar las traversias caminos i servidumbres, destinando lo al uso i cultivo que mas se acomode, p.^o dentro de un año a lo mas parrieara casa y estar a habitada.

3.^a Solicitara del Jefe respectivo que se de posesion juridica en virtud de este despacho por el cual se demarcaran los linderos en cuyos limites parria a unos de sus matorras algunos arboles frutales i alreres de alguna utilidad.

4.^a El terreno de que se hace donacion a de dos sitios de ganado mayor segun explica el sitio que corre en el expediente. El Jefe que oiere la posesion lo hara mestir conforme a ordenanza quedando el sobrante que resulte a la Nacion para los usos convenientes.

5.^a Si contraviniere a estas condiciones perdera su derecho al terreno y sera denunciado por esto

En consecuencia mando que servivole de titulo el presente y teniendolo por firme y rubrico se tome valor de el en el libro que corre para el entregue al interesado para su resguardo i demas fines. Dado en Monterey a 1.^o de abril de 1837.

Nicolas Gutierrez

Francisco del Castillo Regente. Bro.
Castillo.

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

I Samuel D. King Surveyor general
of the United States for the State of California and as
such now having in my office and under my charge
and control a portion of the archives of the former
Spanish and Mexican Territory or Department of
upper California do hereby certify that the two proceed-
-ing and hereunto attached pages of tracing paper
numbered one and two and each of which is verified
by my initials (S. D. K.) exhibit true and accurate copies
of the writing upon two pages of an imbound book
entitled *Titulos on file and forming part of the*
Said Archives in this office.

In testimony whereof I have hereunto
signed my name officially and affixed my private seal
(not having a seal of office) at the City of San Francisco
Cal. this 15th day of March 1852.

Samuel D. King.

Surveyor Genl. Calif.^a

Filed in office. March. 22nd 1852.

Geo. Fisher. Secy.

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Translation of
Grant

Nicolas Gutierrez Lieutenant Colonel of Cavalry
of the Standing Army, Commandant General Insp
ector and Superior Potestual Chief "ad interim" of
the Territory of upper California
No. 99.

Whereas *Diego Cruz Sorvantez*
a Native Mexican, has solicited for his personal
benefit, and that of his family the tract of land
known by the name of San Joaquin, the boundaries
whereof are, to the North San Felipe, to the South
Santa Ana, the West the plain of San Juan, and
to the East the hills of the same tract of land, the
prerequisite proceedings and investigations having
been verified, according to the Laws and Regulations
upon the subject, by virtue of the authority in me
vested, by this days decree and in the name of
the Mexican Nation, I have granted to him the said
Cruz Sorvantez, the aforesaid tract of land, declaring
by these presents, to be his property subject to the
approval of the Most Excellent Deputation and to
the following Conditions, to wit:

1st That he will submit to those conditions which
the Regulations, which are to be adopted for the
distribution of vacant Lands may establish, and
that in the mean time, neither the grantee nor his
heirs shall be authorized to divide nor to alienate
the granted Land impose Land rent or other
such Mortgage nor other burden nor transfer it to
"Malyncins"

2nd He may enclose it without obstructing the cross-
ings, highways and right of way destined to the
use or Cultivation, which may best suit him, but
within a year at the furthest he shall build a
house, and it shall be inhabited.

3rd He shall solicit the Respective Magistrate to
give him legal possession, in virtue of this title, by
whom the boundaries shall be traced out in the
limits of which he shall put, besides the Land mar-
ks, some fruit or forest trees of some utility.

4th The Land of which donation is made consists
of two leagues (sitios de Sanado Mayo) according to
the plot annexed to the Record of the proceedings
(Especciente) The Magistrate who gives possession of it
shall cause it to be measured according to the
Ordinance, the Doubts which may result shall
remain to the Nation for the necessary purposes.

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3th Should the grantee violate these conditions he shall forfeit his right to the Land and it may be denounced by another.

In consequence of which I command that these presents being held firm and valid shall serve him as a title and a Recabo thereof be made in the respective Book and be delivered to the party interested for his security and other purposes. Given in Monterey on the 1st day of April 1836.

Nicholas Gutierrez
 Francisco Castillo Negrete
 Secretary
 Castillo

I do hereby certify that the foregoing document is a true and faithful translation of the annexed Spanish Document No. 99.

San Francisco March 22^d 1852

Geo. Fisher
 Secy

Filed in office March 22^d 1852

Geo. Fisher
 Secy

E. S.

La comision de Agricultura encargada de examinar la proposicion presentada por el Senor Jimeno contraida a pedir la Suprema aprobacion de los terrenos que se an concedido y se hallan comprendidos en las diez leguas litorales y los terrenos que se reconocian por de las Abieiones en cuenta la comision que la proposicion referida esta fundada en razon y justicia; pues quien puede regar que se tome una providencia tan necesaria como la propuesta y han conformado a la ley de 18 de Agosto de 1824 nada mas benefico puede hacerse a favor de la agricultura que proporcionar los a los propietarios del terreno su pacifica y segura posesion y por lo tanto la comision uniendo al sentido del Sr. Jimeno propone a la deliberacion de Exma Junta la siguiente proposicion.

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Report of Commission on Agriculture.

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1^o Se aprueba la proposicion y con sus articulos que presento el Sr. Jimeno en fecha 8 del Corriente.

2^o Que en consecuencia se haga la exposicion que se indica al Supremo Gob^{no} para el fin que se ha propuesto.

Sala de comisiones de la Junta en Monterrey
a 28 de Abril de 1820.

José F. Castro. José Rafael Gonzales.
En este dia se le dio 1^a lectura. Aprobado en 1^o de Mayo.
En 13 de Julio del mismo año se remitió testimonio al E. S. Gob^{no}

E. S.

La ley de Colonizacion de 18 de Agosto de 1824 previene en su art^o 4. que no podran colonizarse los terrenos comprendidos en las 20 leguas limitrofes con cualesquiera Nacion estrangera, ni 10 litorales sin la previa aprobacion del Sup^{mo} Poder Ejecutivo de la Nacion, y en el Reglamento concordante expedido en 21 de Nov de 1828 prohibe en su art^o 17. colonizar los terrenos que ocupen las Abieiones hasta que se demuelva si deven considerarse como propiedad de las reducciones de los neofitos, catecumenos y pobladores Abieicanos.

Ningun terreno baldio de este Departamento se podra colonizar conforme a dicha ley y Reglamento por que todo es litoral y la mayor parte de la estension de dichos terrenos se reconocian por de las Abieiones. Desde la fecha de la indicada ley y Reglamento no se pudo conceder a ningun particular terreno alguno

por no haberlo permitido las atenciones del Gob^{no} hasta el año de 1834 que apunvadas en medio de sus necesidades los habitantes de este pais para conseguir unos terrenos incultos que ameniendolos les produjeran su subsistencia y las de sus familias, dirijieron sus repetidas instancias al Gob^{no} Departamental y esta autoridad mandó se formasen los Expedientes respectivos para que en conformidad a las leyes y reglamentos de la materia se les fuese dado a los particulares los sitios que se continuaba en estado de colonizar y hallandose multitud de agraciados poseedores de terreno que el Gob^{no} se les hace una definitiva concecion, recayendo sobre esta la correspondiente aprobacion de la estinguida Deputacion y al presente por la Junta Departamental ya es llegado de caso que V. E. pida al Sup^{mo} Gob^{no} en conformidad a la susodicha Ley y reglam^{to} la debida aprobacion de todos los terrenos que se han concedido en este Departamento por el Gob^{no} del mismo ya sea de los que se hayan en las 10 leguas literales y de los terrenos que se reconocian por de las Misiones para que los poseedores gozen de una pacifica y segura posesion de sus terrenos y en cuya virtud pido a la Junta tome en consideracion mis proposiciones sig^{tes}

1^a Que se dirija al Sup^{mo} Gob^{no} de la Nacion por esta Junta, una exposicion contrainida a lo que llevo manifestado para la aprobacion de los terrenos concedidos a los particulares por el Gob^{no} de este Depart^{to} y aprobados por la Deputacion y Junta Departamental.

2^a El Excmo S. Gob^{no} dirijirá al Sup^{mo} Gobierno una noticia circunstanciada de los terrenos concedidos a particulares para su Sup^{mo} como es mi intento.

Monterrey. 8 de Abril de 1840

Manuel Jimeno.

Sres. Castro y } Dada cuenta a la Excmo Junta, acordó
Gonzales } en sesion del dia y del corte que pase a la
Comision de Agricultura.

José Z. Hernandez. Seco.

En 13 de Julio del mismo año se remitió testimonio al E. S. Gobernador.

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

Samuel A. King, Surveyor General of the

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United States for the State of California and as such now having in my Office and under my charge and control a portion of the Archives of the former Spanish and Mexican Territory or Department of Upper California do hereby Certify that the five preceding and hereunto annexed pages of tracing paper numbered from one to five inclusive and each of which is verified by my initials S.D.H. exhibit true and accurate Copies of certain documents on file and forming part of the said archives in this Office.

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In testimony whereof I have hereunto signed my name officially and affixed my private Seal (of not having a Seal of Office) at the City of San Francisco Cal. this 13th day of March. A.D. 1852.

Samuel D. King.

Surveyor Genl. Calfa.

Filed in Office. March. 23rd 1852.

Geo. Fisher.
Secy.

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Excellent Sir

The Committee on agriculture, having in charge to examine the proposition presented to Senor Jimeno asking for the Supreme Approval of the Lands which have been granted and are contained within the ten littoral leagues, and the Lands acknowledged as belonging to the Missions, believing that such proposition is grounded on right and justice:

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Report of Commission of agriculture

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because, who can refuse the taking of so necessary a measure as the one proposed, and so conformably to the Law of 18th of August 1824? Nothing more beneficent can be done in favor of agriculture than to proceed, to the owners of Land, a peaceful and secure possession thereof; and therefore this Committee being of Senor Jimeno's opinion, propose to the deliberation of the Excellent Junta the following propositions

- 1st They Approve of the proposition and its articles presented by Senor Jimeno on the 8th Instant
- 2^d Consequently that the aforesaid Exposition be made to the Supreme Government to the Intendance office Committee Hall of the Junta in Montevideo on the 28th April 1840

Signed Jose F. Castro (Signed) Jose Rafael Gonzalez

On this day it was read for the first time.

Approved on the 15th May.

On the 13th of July of the same year a testimony thereof was transmitted to his Excellency the Governor

Excellent Sir

The Law of Colonization of 18th of August 1824 reads in its Art. 4th that the Lands contained within the twenty bounding leagues with any foreign Nation or within the ten littoral leagues, cannot be Colonized, without the previous Approval of the Supreme Executive Department of the Nation. The respective Regulation, issued on the 31st of November 1828, prohibits by its Art 17th to Colonize the Lands occupied by the Missions, until it may be decided whether they are to be considered as property appertaining to the Reserves of the Neophytes, Catácumans or Mexican Settlers

According to the said Law and Regulation no vacant Land of this Department could have been Colonized; because it is all littoral, and the greater part thereof

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is acknowledged as belonging to the Mexicans -
 Since the date of the mentioned Law and regula-
 tion, no land was granted to any private individual
 because the attentions of the Government did
 not permit of it until 1834; when the inhabitants
 of this country, urged by their necessities, in order to
 obtain some unsettled lands, which being cultivated
 would produce for their support and that of their
 families, address their several applications to the
 Departmental Government - This authority directed
 the respective Expedientes should be formed that
 in conformity with the Law and regulations on
 the subject, the Lands Consacrated *propia* for colo-
 nization, should be donated to private individuals
 and whereas many grantees are now possessors of the
 land, the Government has granted them, by issuing a
 patent in virtue thereof, a definitive concession has
 been made unto them, with the corresponding approval
 of the Ex Deputacion, and now, of the Departmental
 Junta: The time is already come that your Excellency
 may ask for, from the Supreme Government in con-
 formity with the said law and regulation, the proper
 approval of the Lands granted, in this Department, by
 the Government of the same, both as to those lands situate
 within the ten littoral leagues, and those recogni-
 zed as belonging to the Mexicans; in order that their

I call by the Quezo
 eng to be a *lituana* with security: in virtue thereof I beg of his Excellency,
 earnest translation the Junta to enter into consideration my following
 from the Spanish propositions: 16th That this Junta may remit to the
 on file in the Office Supreme Government of the Nation an Expediente of what
 San Francisco I have manifested, in order to ask for the approval
 March 22nd 1852 of the Lands granted to private individuals, by the
 Geo. Fisher Secy Government of this Department, and approval of,
 by the Deputacion and Departmental Junta
 24. His Excellency the Governr will remit to the Supreme
 Govt in office a detached statement of the Lands granted
 March 22nd 1852 to private individuals for its Supreme knowledge
 Geo. Fisher Monterey the 8th of April 1840
 Secy

possessions may enjoy such Lands peacefully and
 in virtue thereof I beg of his Excellency,
 earnest translation the Junta to enter into consideration my following
 from the Spanish propositions: 16th That this Junta may remit to the
 on file in the Office Supreme Government of the Nation an Expediente of what
 San Francisco I have manifested, in order to ask for the approval
 March 22nd 1852 of the Lands granted to private individuals, by the
 Geo. Fisher Secy Government of this Department, and approval of,
 by the Deputacion and Departmental Junta

24. His Excellency the Governr will remit to the Supreme
 Govt in office a detached statement of the Lands granted
 March 22nd 1852 to private individuals for its Supreme knowledge
 Geo. Fisher Monterey the 8th of April 1840

(Signed) Manuel Jimeno
 This Opinion having been presented to the Most. Excel. the Junta
 in the session of the 9th inst. it was ordered to be referred
 to the Committee on Agriculture Jose G. Toran Secy
 On the 13th July of the same year, a testimony thereof was
 transmitted to his Excellency the Governr (A. Reber's)

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El Ciudadano Melchor
 Murquis, Coronel de Ejército, Teniente Coronel
 Mayor del Regimiento de Nacionales de esta Ciudad
 Y Teniente Gobernador del Estado libre de Mexico.

El Sr. Ministro de relaciones Interiores y exteriores, con
 fecha de 18 del corriente me ha dirigido el decreto siguiente.

" Núm. 73. Exmo. Sr. = El Supremo Poder Ejecutivo me ha
 dirigido el Decreto que sigue.

" El Supremo Poder Ejecutivo nombrado provisionalmente
 por el Soberano Congreso General Constituyente todas

los que las presentes vieren y entendieren. Sabed: Que el
 mismo Soberano Congreso ha decretado lo que sigue."

"El Soberano Congreso General Constituyente de los
 Estados Unidos Mexicanos, ha tenido a bien decretar:

1.º La Nación Mexicana ofrece a los extranjeros que vengan
 a establecer en su territorio, seguridad en sus personas
 y en sus propiedades, con tal que se sujeten a las leyes
 del país.

2.º Son objetos de esta ley aquellos terrenos de la nación
 que no siendo de propiedad particular ni pertenecientes
 a ninguna corporacion o Pueblo pueden ser colonizados.

3.º Para este efecto los Congresos de los Estados formularan
 a la mayor brevedad las leyes o reglamentos de coloniz-
 -acion de su respectiva demarcacion, conformandose
 en toda a la Acta Constitutiva, Constitucion general
 y reglas establecidas en esta ley.

4.º No podran colonizarse los territorios comprendidos
 entre las veinte leguas limitrofes con cualquiera nacion
 extranjera ni diez litorales sin la previa aprobacion
 del Supremo Poder Ejecutivo general.

5.º Si para la defensa o seguridad de la nacion
 el Gobierno de la Federacion tuviese por conveniente
 hacer uso de alguna porcion de estos terrenos para
 construir almacenes, arsenales u otros edificios
 publicos podra utilizarlos con la aprobacion del
 Congreso general y en su receso con la del Consejo de
 Gobierno.

6.º No se podra antes de cuatro años, desde la pub-
 licacion de esta ley, imponer derecho alguno por la
 entrada de las personas de los extranjeros que vengan
 a establecerse por primera vez en la Nacion.

7.º Antes del año de 1840 no podra el Congreso
 General prohibir la entrada de extranjeros a colonizar

Colonization
 Law.
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a no ser que circunstancias imperiosas le obliguen á ello con respecto á los individuos de alguna nacion.

8.º El Gobierno sin perjudicar el objeto de esta Ley tomara las medidas de precaucion que juzgue oportunas para la seguridad de la federacion con respecto á los extranjeros que vengyan á colonizar.

9.º Debera atenderse con preferencia en la distribucion de tierras á los ciudadanos Mexicanos y no se hara distincion alguna entre ellos, sino unicamente á aquella á que den derecho los meritos particulares y servicios hechos á la Patria ó en igualdad de circunstancias, la vecindad en el lugar á que pertenecen los terrenos que se repartiran.

10.º Los Militares que con arreglo á la oferta de 27 de Marzo de 1821 tengan derecho á tierras, seran atendidos en los Estados en vista de los Diplomas que al efecto les libre el Supremo Poder Ejecutivo.

11.º Si por los derechos de capitalizacion segun las probabilidades de la vida el Supremo Poder Ejecutivo tuviere por oportuno enajenar algunas porciones de tierras en favor de cualesquiera empleados, asi militares como civiles de la federacion, podra verificarlo en los valdiesos de los territorios.

12.º No se permitira que se reúna en una sola mano como propiedad mas de una legua cuadrada de cinco mil varas de tierra de regadío, cuatro de Superficie de temporal y seis de Superficie de abrevaderos.

13.º No podran los nuevos pobladores pasar sus propiedades á manos muertas.

14.º Esta Ley garantiza los contratos que los empresarios celebraren con las familias, que traigan á sus ~~costo~~ expensas, siempre que no sean contrarios á las leyes.

15.º Ninguno que á virtud de esta Ley adquiera tierras en propiedad, podra conservar las estando arrendado fuera del territorio de la Republica.

Lo tendra entendido el Supremo Poder Ejecutivo y dispondra lo necesario á su cumplimiento, haciendolo imprimir, publicar y circular. Mexico 18 de Agosto de 1824. = 1.º = 3.º = Cayetano Barra, Presidente. = Pedro de Ahumada, Diputado Secretario Manuel de Villa y Cosio, Diputado Secretario. =

Por tanto mandamos á todos los Tribunales, Justicias, Jefes, Gobernadores y demas Autoridades asi Civiles como Militares y eclesiasticas de cualquiera clase y dignidad, que guarden y hagan guardar

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cumplir y ejecutar el presente Decreto, en todas sus partes. Tendreislo entendido para su cumplimiento y dispondeis se imprima, publique y circule. En Mexico a 18 de Agosto de 1824 = Nicolas Bravo Presidente. Vicente Guerrero. = Miguel Dominguez. A. D. Lucas Alaman.

"Y lo comunico a V. E. para su inteligencia y cumplimiento."

Y para que llegue a noticia de todos, mandó se publique por bando en esta Capital, y en las demas ciudades, villas y lugares del distrito de mi cargo, fijandose en los parages acostumbrados y circulandose a quienes toque cuidar de su observancia. Dado en Mexico a 23 de Agosto de 1824.

Melchor Morqueu.

Manuel de Aguirre.
Especial Primer.

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

I Samuel L King Surveyor General of the United States for the State of California and at such now having in my office and under my charge and control a portion of the Archives of the former Spanish and Mexican territory or Department of Upper California do hereby certify that the annexed page of tracing paper / which is verified by my Initials (S.L.K.) exhibit a true and accurate copy of a certain paper or document on file and forming part of the said archives in this office.

In testimony whereof I have hereunto signed my name officially and affixed my private Seal (not having a Seal of office) at the City of San Francisco Cal. this 1st day of Jan. A.D. 1852.

Sam^l L King.

Surveyor G. Cal.

Filed in Office. June 16th. 1852.

Geo. Fisher. Secy.

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Citizen Melchor Múzquiz, Colonel of the Army
Senior Lieutenant Colonel of the Regiment of the
Milicias of this City and Lieutenant Governor of
the Free State of Mexico.

His Excellency the Minister of Foreign & Home
Departments under date of 18th inst. has trans-
mitted to me the following Decree.

"No. 73 Excellent Sir - The Supreme Executive Power
has transmitted to me the following Decree

"The Supreme Executive Power appoints provisionally
by the Sovereign General Constituent Congress to all
who these presents may see or hear, Know ye;

That the said Sovereign Congress has decreed the
following

The Sovereign General Constituent Congress of the
Mexican United States, has deemed it expedient
to decree:

1st The Mexican Nation offers to those Foreigners
who may come to establish themselves in its Territory
security in their persons and their property provided
they submit to the Laws of the Country

2nd Those lands of the Nation which are not the pro-
perty of any individual, Corporation or Town are
the object of this law and they may be colonized

3rd For this purpose the Congress (Legislatures) of the
States, will with the least delay enact laws or regu-
lations for colonizing within their respective bounda-
ries, conforming in all respects to the Constitution and
the General Constitution and the rules established
in this Law

4th The lands embraced within the Twenty leagues
bordering on any Territory Nation or within the ten
littoral leagues can not be colonized without the
previous approbation of the Supreme General
Executive Power

5th If the Government of the Federation should deem
it expedient to make use of any portion of these lands
for building store houses, arsenals or other public
buildings, for the defence or security of the Nation, it
can do so with the approbation of the General Congress
and during its recess with that of the Government
Council

6th No tax can be levied on the persons of Foreigners
who may come to settle for the first time within the
Nation, before the expiration of four years from the date

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of the publication of this Law
 7th The General Congress can not prohibit the entrance of Foreigners for colonizing, before the year of 1840 unless imperious circumstances may compel it thereto in relation to individuals of some Nation
 8th The Executive without prejudicing the object of this Law will adopt such measures of precaution as may be deemed expedient for the security of the Federation relative to Foreigners who may come to Colonize.

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9th The Mexican Citizens shall be attended to in preference, in the distribution of lands, and there shall be no distinction made among them, except such only to which the particular merits and services rendered to the Country may give a right, or in equal circumstances, the residence of the place to which the lands which may be distributed may appertain.

10th The Military men who according to the offer of the 27th March 1831 may have right, ^{to lands} shall be attended to in the State, by presenting the warrants, which for that purpose the Supreme Executive Power may issue them.

11th Should the Supreme Executive Power deem it expedient by the decrees of Capitalization according to the probabilities of life, to alienate some portions of the lands to any employes of the Federation Military or Civil it may do so of the Vacant Lands of the Territory.

12th It shall not be permitted, that there shall be united in one hand as property, more than one square league, of five thousand Varas, of land susceptible of irrigation, or superficieses of four leagues of temporal (dependant on the rains) and a superficieses of six leagues of pasture lands.

13th The new settlers shall not be competent to pass their property in Mortmain.

14th This Law guarantees the contract which the Empresarios may make with the Families which they may bring at their expense, provided they be not contrary to the laws.

15th No person ^{who} shall by virtue of this Law acquire lands as property shall continue to hold the same being a resident without this Republic.

16th The Executive shall proceed in conformity with the principles established in this Law to the Colonization.

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of the Territories of the Republic.
 The Supreme Executive Power shall take cognizance of
 this and shall do what is necessary for its fulfillment
 by causing the same to be printed, published & circulated
 Mexico August 18th 1824 = 4 = 3 Cayetano Ybarra
 Presidente - Pedro de Ahumada, Deputy, & Secretary
 Manuel Villa y Rosio Deputy & Secretary = we
 Therefore command all the tribunals Judges Cheifs
 Govins and the other Authorities Military and Eccl
 scastical of whatsoever class or grade they be, to keep
 and cause to be kept, comply with and execute this
 present Decree, in all its parts. Know ye for its fulfillment
 and cause the same to be printed published and
 circulated

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Mexico August 18th 1824 = Nicolas Bravo, Presidente
 Vicente Guerrero, Miguel Domiguez. To Don Lucas
 Alaman" and I communicate the same for your
 Excellency's information and Compliance
 and that it may come to the knowledge of all, I comm
 and the same to be published, as an Edict in this
 Capital, and the other Cities, Towns and places of the
 District under my charge, and to be posted up in
 the customary places and to be circulated to whom
 its fulfillment appertains

Given in Mexico on the 23rd August 1824

(Signed) Melchor Muzquiz

Manuel de Aqueve, Chif Clerk

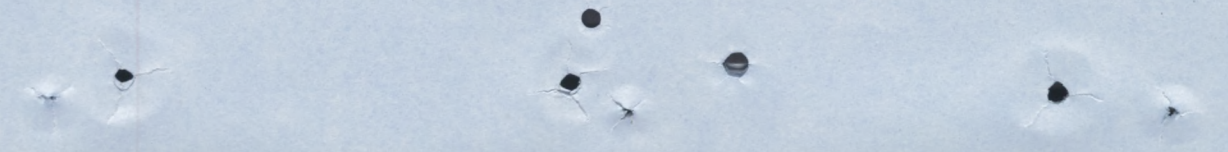
I certify the foregoing to be a true and correct transla
 tion made by me from an authenticated copy of
 the Original Spanish Document on file in the Office
 of the U.S. Surveyor General for California, which
 Authenticated copy is on file in this office in case
 No. 56 Leriz Lavantes for the Rancho of San Joaquin
 Alon Rosa Morada, June 16th 1852

Geo. Fisher

Secy

Filed in office June 16th 1852

Geo. Fisher Secy



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Sesion del dia 9 de Abril.

Leida y aprobada el acta de la sesion anterior se dio cuenta con una proposicion del Sr Jimeno para que se solicite la Suprema aprobacion de los terrenos que se han concedido en las diez leguas litorales y los que se renovian por de las misiones y acervo que pase a la comision de agricultura: con lo que se llevo a la sesion publica para estar en secreta de reclamo no asistiendo los sres. Carrillo y Requena por enfermedad
Manuel Jimeno. Presidente.

José Z. Fernandez.

E
Extracts
of the Journal of the
Junta Departamental.

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Sesion del dia 28 de Abril.

Se dio primera lectura del dictamen de la comision de agricultura sobre la solicitud de la Suprema aprobacion de terrenos litorales y de misiones que se han concedido a varios particulares.

Manuel Jimeno. Preside.

José Z. Fernandez.

Sesion del dia 1º de Mayo.

Leida y aprobada el acta anterior se puso a discusion y fue aprobado asi en su totalidad como en lo particular cada uno de los diez articulos de que consta el dictamen de la comision de agricultura relativo a que se solicite del Supremo Gobierno la aprobacion de los terrenos litorales y conocidos por de misiones que ha dado el Departamental a varios particulares.

Manuel Jimeno. Preside.

José Z. Fernandez. Sec.

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

I Samuel D. King,

Surveyor General of the United States for the State of California and as such now having in my office and under my charge and control a portion of the archives of the former Spanish and Mexican Territory or Department of Upper California, do hereby certify that the three preceding and hereunto annexed pages of tracing paper numbered 1, 2, & 3 and each of which is verified by my initials (S. D. K.) exhibit true and accurate extracts of the Journal of the

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of the public Sessions of the Departmental Council or Junta for the year 1850 which is on file and forms part of the said archives in this office.

In testimony Whereof I have herewith signed my name officially and affixed my private Seal (not having a Seal of office) at the City of San Francisco Cal. this 7th day of June. 1852.

Samuel D. King.

Surveyor Genl. Cal.

Filed in Office. June. 16th 1852.

Gen. Fisher. Secy.

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Session of the 9th day of April
 Having read and approved the act of the pre-
 ceding Session, a report of the same was made
 with a proposition introduced by Sr Jimeno
 in regard to soliciting the Supreme approval of
 the Lands granted within the ten littoral leagues
 and of those acknowledged as pertaining to the
 Missions: which was ordered to be referred to the
 Committee on Agriculture; after which, the public
 Session was closed, in order to enter in a secret Session
 according to regulations. Senores Carrillo and Regu-
 era were not present on account of illness

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(Signed) Manuel Jimeno
 (Signed) Jose Y Fernandez President

Session of the 30th day of April

X X X X X
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The opinion of the Committee on Agriculture relative
 to the soliciting the Supreme approval of the littoral
 and Mission Lands granted to several individuals
 was read for the first time

Signed Jose Y Fernandez Signed Manuel Jimeno
 President

Session of the 1st day of May

The reading of the preceding act having been approved
 it was then submitted for discussion and each of
 the two articles contained in the Opinion of the Com-
 mittee on Agriculture relative to the solicitation of the
 Supreme Government for its approval of the littoral &
 Mission Lands donated by the Departmental Gov-
 ernment to several individuals, were approved
 in their general as well as in their particular
 bearing X X

X X X X X

Signed Manuel Jimeno
 Signed Jose Y Fernandez President

Office of the Board of Commissioners of California
 re: Land claims

I certify the foregoing to be a true translation
 from the Spanish Document filed in this Office in
 Case No. 56. San Francisco June 16th 1852

Geo. Joshua Key

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Filed in office June 16th 1852
Geo. Fisher
Secy

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Indice de los terrenos adjudicados y personas a quienes se les ha concedido.

San Joaquin. C. a D^o Cruz Cervantes.

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Index.

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En este Indice hay el numero de 133. Especificos: pero por equivocacion se pasa en la numeracion del 339 al 340 habiendo seguido en la misma.

Manuel Jimeno.

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

I Samuel D King, Surveyor Gen^l of the United States for the State of California and as such now having in my office and under my charge and control a portion of the Archives of the former Spanish and Mexican Territory or Department of Upper California do hereby certify that the above and foregoing is truly taken from a document designated as Index of land titles, which is on file and forms part of the said archives in this Office.

In testimony whereof I have hereunto signed my name officially and affixed my private Seal (not having a seal of office) at the City of San Francisco. Cal. this 2nd June. 1852.

Samuel D King
Surveyor Gen^l Calif^a

Nota. In examining the original Index within referred to I find that the letter C. and N, in each case ended in the second column and those letters respectively appear to be in lieu of and stand for the abbreviations "Concedido" and "Neg^{do}" which are the remarks made in that column in the first and second cases inserted in said Index.
San Francisco. Cal. 29 June. 1852. Saml D King. Survey^r Gen^l Calif^a
Filed in office. June. 30th 1852. Geo. Fisher. Secy.

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Disposiciones Generales.

Reglamento para la colonizacion de los Territorios de la Republica.

Estando prevenido en el articulo 16 de la ley General de colonizacion de 18 de agosto de 1824 y el Gobierno conforme a los principios establecidos en dicha ley proveyo a la colonizacion de los Territorios de la Republica: y siendo muy oportuno para darse a dicho articulo el mas puntual y exacto cumplimiento, dictar algunas disposiciones generales que faciliten su ejecucion en los casos que hubyan ocurriendo el E. S. Presidente ha tenido a bien acordar los

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H.
General Regulations. articulos que siguen.

1.^o Se autoriza a los Jefes Politicos de los Territorios para q. con arreglo a la ley del Congreso general de 18 de agosto de 1824 y bajo las calidades que despues se expresan puedan conceder terrenos baldios de sus respectivos Territorios a los empresarios familias o personas particulares Abjicanas o extrangeras que lo soliciten con el objeto de cultivar los o habitar los.

2.^o Todo pretendiente de terrenos sea empresario cabeza de familia o persona particular se presentará al Jefe politico del respectivo Territorio por instancia en que se espese su nombre, patria, profesion el numero, naturaleza, religion y demas circunstancias de las familias o personas con q. quiere colonizar, marcando arimino con la distincion posible y describiendo en un plano el terreno que solicita.

3.^o El Jefe politico proveerá desde luego a tomar el informe q. sea bastante sobre si se encuentran o no en la solicitud las calidades que requiere la citada ley de 18 de agosto asi en el terreno, como en el pretendiente y para que se atiendan a este sencillamente ya para que se le pueya oyendo al mismo tiempo a la autoridad municipal respectiva sobre si halla o no algun reparo en la concesion.

4.^o En vista de todo el Jefe Politico acordará o no a dicha solicitud arreglandose exactamente a las leyes aplicables a la materia con especialidad a la ya citada de 18 de agosto de 1824.

5.^o Las concesiones hechas a personas o familias particulares no se tendrán por valederas definitivamente sin previo consentimiento de la diputacion territorial a cuyo efecto se pasaran a esta los expedientes respectivos.

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- 6.º Cuando el Jefe Político no obtuviere la aprobación de la Diputación territorial dará cuenta al Supremo Gobierno con el expediente de la materia p.ª su resolución.
- 7.º Las concesiones hechas á empresarios para que colonizen con muchas familias no se tendrán por válidas definitivamente hasta no obtener la aprobación del Supremo Gobierno a q. se dará cuenta con el expediente, agregándose a este el informe q. parezca á la diputación territorial.
- 8.º Hecha definitivamente la concecion que se solicita se expedirá un documento firmado por el Jefe Político que sirva de título al interesado expresándose en este que la concecion se estiendo con entera conformidad á lo dispuesto por las leyes en cuya virtud se procederá á la y. posesion de todas las solicitudes que se presenten y conceciones que se hayan quedado los correspondientes asientos en un libro destinado al efecto con los diseños de los terrenos que se concecieron y se pasará al Supremo Gobierno cada trimestre una nota circunstanciada.
- 10.º No se podrá admitir capitulacion alguna para nueva poblacion si no es q. el capitulante se obligue á presentarse en calidad de pobladores á lo menos doce familias.
- 11.º El Jefe Político señalará al nuevo poblador un tiempo proporcionado dentro del cual precisamente deberá cultivar u ocupar el terreno en los terminos, y con el numero de personas ó familias que haya capitulado en el concepto de que no haciéndolo quedará nula la concecion del terreno, pudiendo sin embargo el Jefe político revalidarla en proporcion á la parte en que hubiere cumplido el interesado.
- 12.º Todo nuevo poblador despues que haya cultivado u ocupado el terreno con arreglo á su capitulacion cuidará de justificarlo ante la autoridad Municipal para que haciéndose el asiento oportuno, consolide y asegure su derecho de propiedad para poder disponer libremente de ella.
- 13.º La Reunion de muchas familias en una poblacion seguirá en su formacion, Gobierno y policia interior las reglas establecidas por las leyes vigentes para las decenas poblaciones de la Republica, teniéndose especial cuidado en las nuevas, de que se construyan con la posible regularidad.
- 14.º El minimum del terreno regadio que se dé para colonizarse por una mano será de noventa

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15^a El terreno que se otorgó por un solar sea de cien varas.

16^a Los huecos q. quedaren entre los terrenos colonizados podran distribuirse entre los poseedores limitofes q. hayan cultivado con aplicacion los Suyos y no hayan recibido toda la estension de terreno que la ley permite, o a los hijos de los mismos poseedores que los soliciten para crear las propiedades de sus familias, teniendo presente la moralidad o industria de los interesados.

17. En los territorios en que haya Abieiones, los terrenos que estas ocupan, no podran colonizarse por ahora y hasta que se resuelva si deben considerarse como propiedad de las reducciones de los neofitos, catecumenos y pobladores Mexicanos.

Es copia. Mexico 21 de Noviembre de 1838.

Ortiz de la Torre. = Corregidor = no subiera. =

Es copia. Puerto de S. Diego. Nbre 19. de 1839.

Agustin V. Zamorano.

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

I Samuel D King Surveyor General of the United States for the State of California and as such now having in my office and under my charge and control a portion of the Archives of the former Spanish and Mexican Territory or Department of Upper California do hereby Certify that the five preceding and hereunto annexed pages of tracing paper numbered from one to Five inclusive and each of which is verified by my initials (S D K) exhibit true and accurate copies of certain documents now on file and forming part of the said archives in this office.

In testimony whereof I have hereunto signed my name, officially, and affixed my private seal (not having a seal of office) at the City of San Francisco Cal. this sixteenth day of March 1852.

Samuel D King.

Surveyor Genl. Calif.

Translated April 15th 1852.

Geo. Fisher. Secy.

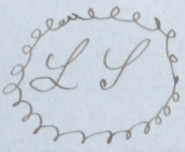
Filed in office July 3rd 1852.

Geo. Fisher. Secy.

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1882

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H

General Provisions or regulations for the colonization of the Territories of the Republic

The 16th Art. of the general law of Colonization of 18th August 1824 provides that the Government, in conformity with the principles therein established, shall proceed to the Colonization of the Territories of the Republic; and it being of moment to issue some general Rules to facilitate the execution of the said Law in cases which may occur, in order to comply punctually and exactly with the aforesaid article. His Excellency the President has thought proper to adopt the following Regulations

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1st The Political Chiefs of the territories are hereby authorized to grant vacant lands, situated within their respective territories, to Empresarios (undertakers or contractors) families or individuals, either Mexicans or foreigners who may petition for them with the object of cultivating or settling the same. Said grants shall be made according to the law of the General Congress of 18th of August 1824 and under the qualifications herein after expressed.

2nd Every petitioner for lands, whether he be an Empresario, head of a family, or an individual, shall appear before the Political Chief of the respective Territory, by a petition stating his name, and the Country, profession, number, birth place, religion and other circumstances of the families or persons with whom he may wish to Colonize, showing at the same time clearly & distinctly and describing on a sketch, the Land petitioned for

3rd The Political Chief shall immediately proceed to take the necessary information in order to ascertain whether the requirements of said law of 18th August are embraced in the petition, and whether the petitioner as well as the land possess the requisite conditions so as to attend to the petitioner at once, or to require of the respective Municipal Authority whether there is or not any objections to the grant.

4th In view of all these, the Political Chief will grant or not said petition in strict accordance with the laws on the subject, and especially in reference to the above mentioned law of 18th August 1824

5th The grants made to individuals or families shall not be definitively valid, without the previous approval of the Territorial Assembly, to whom the respective Expedientes shall be referred.

6th If the Political Chief does not obtain the approval

of the Territorial Assembly, he shall report the same to the Supreme Government, accompanying the Expediente for its decision.

7th The grants made to the Empresarios, who wish to colonize with several families, shall not be held definitively as valid, until the approval of the Supreme Government be obtained, to which an account must be given, accompanying the Expediente with such report as the territorial Assembly may think proper to make.

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8th Having been definitively made, a patent signed by the political Chief shall be issued, which shall serve as a title to the interested party, expressing therein that the grant has been made in strict accordance with the provisions of the Laws, by virtue of which, they shall proceed to give the possession.

9th Of all the petitions presented and grants made the corresponding entries shall be made in a Book kept for that purpose with the plans of the Lands granted; and a detailed Statement thereof shall be transmitted quarterly to the Supreme Government.

10th No propositions shall be admitted, for a new settlement, unless the persons proposing the same bind themselves to present as settlers, twelve families at least.

11th The political Chief will determine the proposed time within which the new settlers shall cultivate, or occupy the land under the terms, and with the number of persons or families agreed upon; with the condition that if such settlers should fail to fulfill the conditions the grant of the land shall be null and void. Nevertheless the political Chief may confirm the same in proportion to the part which the interested party may have fulfilled.

12th Every new settler after having cultivated or occupied the land according to his agreement, shall prove such acts before the Municipal Authority, that making the proper entry, his right to the property may be strengthened and confirmed and thus enable him to dispose freely of it.

13th The assemblage of several families into a settlement shall follow in their organization, interior Government and policy, the rules established by the existing Laws for the other settlements of the Republic taking special care that the new settlements be laid out and built up with regularity.

14th The minimum of irrigable land granted for

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Colonization shall be for each individual 200 varas square: the minimum of farming (temporal) lands shall be 800 varas; and the minimum of pasture lands (abrevadero) shall be 1200 varas.

15th The land granted for a breeding lot (solar) shall be 1000 varas.

16th The vacant tracts of land lying between the colonized lands, may be distributed among the adjoining owners, who may have carefully cultivated their own, and have not received the quantity of land allowed by the Law, or to the children of those same owners, who may have petitioned for them, in order to unite the possessions of their families; remembering very particularly to give the preference, in such grants to the moral and the industrious.

17th In those Territories where there are Missions, the lands occupied by them, can not be colonized at present, nor until it shall be resolved whether they have to be considered as the property of the settlements of Neophytes, Catechumens, or Mexican Settlers.

The foregoing is a true copy. Mexico 21st Nov 1828 = Ortiz de la Torre = corrected = a scroll

It is a true copy. Port of San Diego Nov^r 19th 1839

(Signed) Augustin V Zamorano

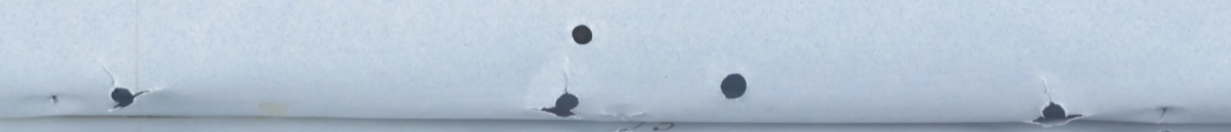
I certify the foregoing to be a true and correct translation from the Spanish

San Francisco 14th April 1853

Filed in office July 3rd 1853

Geo. Fisher
Secy

[Faint, illegible handwriting, possibly bleed-through from the reverse side of the page]



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S. Joaquin, p.^a D. Cruz Cortantes

En 31 de Mayo. A la Comision de Terrenos
Gomez

En 7 de Julio volvio dictaminado y se devolvio
a la Comis.^a p.^a de reforma.

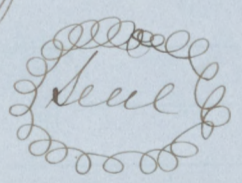
A Fragment
of Expedite

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

I Samuel D. King
Surveyor General of the United States for the State
of California and as such, now having in my office
and under my charge and control a portion of the
Archives of the former Spanish and Mexican Terri-
tory a Department of Upper California, do hereby
certify that the above and foregoing writing upon
this sheet of tracing paper is a true and accurate
copy of the writing upon a paper in bundle No. 2
containing acts of the Departmental Assembly under
a cover entitled "Carpeta g^{ra}l en la que consisten
las de los Expedientes pasados a Comisiones Mayo
de 1836" on file and forming part of the Archives
in this office.

In testimony whereof I have hereunto
signed my name Officially and affixed my pri-
vate Seal (not having a Seal of Office) at the
City of San Francisco Cal this 15th day of March
1853.



Samuel D. King
Sur. Gen. Cal.

San Joaquin: by D Cruz Cortantes

On the 31st May. To the Committee on Lands
(Signed) Gomez

On the 7th of July. Reported and returned to the
Committee to reform the Report

Certify the foregoing to be a true and correct translation from the annexed Spanish Documente drawn on tracing paper and authenticated by Saml. D. King Surveyor Genl Cal; on the 15th March 1852 and on file in this Office

Geo. Fisher
Secy

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U. S. Land Commission
San Francisco July 6th
1853

Filed in office March 23. 1853

Geo. Fisher
Secy

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No. 11 (copy)

Office of the Board of Commissioners of California Land Claims

San Francisco March 15th 1852

Samuel D King Esq

Surveyor General:

Sir: There is pending before the Board of Commissioners a petition in favor of Luiz Corvantes, being No. 56 on the docket of the Board claiming a tract of land under a Grant from Governor Nicholas Gutierrez to Luiz Corvantes dated April 1st 1836, which tract of land is called San Joaquin or Rosa Morada as is described as follows: On one side, the Arroyo of San Felipe, on the second side the hills of Montecinos of San Joaquin on the third the Arroyo Santa Anna and on the fourth a line across through the plain of San Juan containing about two square leagues situated in the County of Santa Clara. Will you please inform the Board whether the Mexican Archives in your Office show that such a grant was made: Whether it was approved by the territorial or departmental deputation and when: Whether the papers relating to such a grant appear in all respects fair and genuine, and whether any particular circumstances have come to your knowledge calculated to cast suspicion on the genuineness and validity of the claim -

Very Respectfully yours
 (Signed) Geo. Fisher
 Secretary

Surveyor General's Office
 San Francisco March 16. 1852

Report of U.S
 Surveyor General

To the Secretary of the Commissioners
 of California Land Claims

Sir: In reply to your inquiry No 11 I have the honor to state that there is among the Archives in this office an Expediente No 156 purporting to show that such a grant was made as specified in your inquiry. Said document does not show the approval of the Departmental Assembly. The papers in that case appear to be fair and genuine and I know of nothing among said Archives calculated to cast suspicion thereon.

Very Respectfully yours
 Saml D King
 Surveyor General

Filed in office
 March 16. 1852
 Geo. Fisher
 Secy

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Index of the tracts of land adjudicated and of the persons to whom they have been granted

F^r Translation

San Joaquin $\frac{2}{3}$ Granted $\frac{2}{3}$ to Don Cruz Coronales $\frac{2}{3}$ 156

There are in this Index 433 Expedientes, but by mistake the numeration runs from 339 to 340 which error continues to the end

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(Signed) Manuel Jimeno

Office of the Board of Commissioners of
California Land Claims

I certify the foregoing
to be a true and correct translation from the Spanish
Document filed in office

San Francisco July 1st 1853

Geo. Fisher

Secy

Surveyor General's Office

San Francisco Cal. 29 June 1853

Sir

In compliance with your request, I have to state that upon examining the archives in office, it does not appear that there is among them, any book journal or record purporting to show the complete proceedings of the Territorial Deputation of California for any month of the year 1836

Very Respectfully

Your Obedt servt

Saml D King

Surveyor General Cal

Wm Carey Jones Esq
Present

Filed in office June 30th 1853

Geo. Fisher

Secy

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Motion to
Dismiss &c.

Before the Board of Land Commissioners for ascer-
taining and settling private land claims in
California. March 16th 1853

In the matter of the claim of Lucy Servantes
claiming the Rancho of San Joaquin.
And now it being moved by the Counsel for the
Claimant, that the said Cause should be set down
for hearing on the petition and testimony of the
Claimant.

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The undersigned moves the Board that
the petition may be dismissed for the following
reasons -

1st. Because the claimant has not filed a copy
of the Expediente existing in the Archives (being the
warrant of the proceedings had upon which the
alleged title was issued to the Claimant, such
Expediente being required by the 4th Article of the
Law creating this Board, and a rule of the board
to be filed as a part of the Claimant's "Claim," "right,"
"title," and "grant."

2d. Because the Claimant has not
made out a *prima facie* case for a decree of
consummation of her alleged claim, or any part
thereof

Geo. W. Cooley
U. S. Law Agent

Filed in office March 16th 1853
Geo. Fisher
Secy

Motion for certificate Commission of Private Land Claims in California
Case of Consummation
Lucy Servantes, claiming the Rancho of Rosa
Madrada No. 56

In this case the Claimant by her Counsel moves the
Board for a certificate according to Law of the
Consummation of said claim as rendered on the
3rd day of August 1852

Jones Tompkins & Sholes
Attorneys for Claimant

Filed in Office Dec. 13. 1852
Geo. Fisher
Secy

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Motion to certify
decision

Commission to ascertain and settle Private Land Claims
Cruz Cervantes Claimant No. 56
The Counsel for Claimant moves the Board to adopt
the following Order.

Ordered that the decision of the
Board heretofore rendered on the validity of the
claim of Cruz Cervantes Case No. 56 on the Doctee
of the Board be certified, together with the reasons
on which the same is founded, to the United States
District Attorney.

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By his Attorneys
Jones Tompkins & Strode

Filed in office Aug 31st 1853

Geo. Fisher Secy

Motion to certify
decision of Board

Commission to ascertain and settle Private Land Claims
in lease form:

No. 56, Cruz Cervantes, claiming the Rancho of
San Jacinto or Rosa Morada

In this case it is conceded and agreed on the part
of the claimant, that the Land claimed is South of
the 37th North Latitude, and in the Southern Judicial
District of California as defined by Law establishing District
Courts of the United States, in said State. And
said Claimant asks that the decision rendered by
said Commission on the validity of his said claim
be certified, together with the reasons on which it
is founded to the District Attorney of the United
States according to Law

By his Attorneys
Jones Tompkins & Strode

Filed in office Sept. 6th 1853

Geo. Fisher Secy

Motion

Mr. Jones moves the Board for leave to withdraw
the original papers in the above cases, certified
copies of the same heretofore filed with
the petitions to remain on file in the office

Filed in office Sept 27th 1853

Geo. Fisher
Secy

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Cruz Covantes Claimt vs Board of Commiss
The United States Defendt & Land Claims
Commissioners on California

Opinion of
Comm. Thornton

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Before I enter upon the consideration of the questions which relate directly to the validity of the claim in this case, I will give my views of the subject upon which this Board was intended to act, and of the foundations upon which any Opinion, that I feel authorized to give must rest, under the act of the 3^d March 1851. A distinct announcement of this basis is not only due to those who are to be affected by the administration of this act of Congress, but being settled in my own mind, will serve as a polar star to guide me through the wide tract of conflicting opinions, which have been the subject of an anxious and protracted discussion. The 8th and 11th sections of the act taken together furnish the chart of our procedure. In the first named, in the 8th it is enacted, "That each, and every person claiming lands in California, by virtue of any right or title, derived from the Spanish or Mexican Government, shall present the same to the said Commissioners, when sitting as a Board together with such Documentary evidence and testimony of witnesses, as the said Claimant relies upon, in support of such claims; and it shall be the duty of the Commissioners, when the case is ready for hearing, to proceed promptly to examine the same, upon such evidence and the evidence produced in behalf of the United States, and to decide upon the Validity of the said Claim, and within thirty days after such decision is rendered, to certify the same with the reasons on which it is founded to the District Attorney of the United States in and for the District, in which such decision shall be rendered". This section declares fully the subject matter upon which we are to decide, that is, the validity of any right or title derived from the source mentioned: It declares the evidence upon which alone, that decision is to be rendered; being that introduced by the claimant on the one side and the United States on the other. Having thus stated the subject matter and the evidence upon which we are to decide it; in the 11th section it proceeds with the same distinctness and precision to declare the Law by which we shall be

governed. That section is in the following words
 "That the Commissioners herein provided for, and the
 District and Supreme Courts, in deciding on the val-
 uety of any claim brought before them under the
 provisions of this act, shall be governed by the treaty
 of Guadalupe Hidalgo, the Law of Nations, usages
 and Customs of the Government from which the claim
 is derived, the principles of Equity and the decisions
 of the Supreme Court of the United States, so far as
 they are applicable." With respect to the subject
 matter of our action, and the evidence upon which
 that action is to be had, the line of our duty as
 prescribed in the 8th Section of the act is palpable
 and easy to be pursued. But in the 11th Section which
 declares the Law that is to govern us, a broad field
 is open to our view, and each land mark demands
 most particular regard. The Treaty of Guadalupe
 Hidalgo is the first in the order of enumeration. This
 Treaty contains nothing more, so far as it bears upon
 this case, than a recognition of the doctrine which is
 enforced in the second head of the Law of Nations
 viz "That in all cases of the acquisition of Foreign
 territory by any nation, the private property of the
 former inhabitants shall be held inviolate." The
 next enumerated ground of decision is the laws
 usages and customs of the former Governments, from
 which the claim is derived. This embraces all the
 written laws which authorize and regulate the
 disposition of the public domain; as also all those
 laws which relate to the form, the construction and
 whatever else may effect, the instruments of convey-
 ance employed for that purpose; and to the condi-
 tions which are annexed, or which are authorized to
 be annexed to the grants in question. The customs and
 usages of the country as they may relate to the same
 subject, are also to govern us. There is no great diffi-
 culty in determining the nature and extent of the influ-
 ence of those laws, customs and usages upon the
 subjects to which we are to apply them; but I
 have felt more difficulty on the question, how far
 we are to notice them judicially, without their being
 brought before us, like Foreign laws duly authenti-
 cated, or established by the evidence appropriate to
 their respective natures. The correct adjustment of this
 question is of great importance to the parties in the

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causes submitted to this Board, and I feel bound to
 advert to it, as it has created some difficulty in my
 mind in the consideration of the points arising in them.
 With regard to the unwritten customs and usages to
 which are imparted by the act constituting this Board
 the force and effect of written Law, their establish-
 ment as it seems to me, requiring the application of
 the rules governing the proof of other facts. Those
 whose rights are to be materially affected by them
 ought to have the opportunity of examining the sour-
 ces from which they are derived, or the witnesses
 who communicate them, and be allowed to show
 by other witnesses, that such is not the custom or
 usage, or even to discredit the witnesses who testify
 to them. The difficulty which I feel on this subject
 is not removed by the recent decision of the Supreme
 Court of United States reported in 11th Howard
 668 United States vs Luna &c. The court was not
 called upon to do so nor do I think they did decide
 this question in that case. It seems that the coun-
 sel for the Appellees moved for an issue to be
 tried by the jury, whether the grant in question
 was perfect and complete or not, by the Laws of
 Spain, in force in the Province of Louisiana, when
 it was made. The Supreme Court decide that there
 was no error in the refusal of the court below to
 grant that motion, and proceed to say "The Span-
 ish Laws which formally prevailed in Louisiana
 and upon which the titles to land in that State
 depend must be judicially noticed and expounded
 by the court, like laws affecting titles to real
 property in any other State. They are questions of
 law, and not questions of fact, and are always to
 be regarded and treated in the courts of Louisiana.
 And it can never be maintained in the courts of
 the United States, that the Laws of any State
 in this Union, are to be treated as the laws of a
 foreign Nation, and ascertained and determined
 as a matter of fact by a jury, upon the testimony
 of witnesses. And if the Spanish laws prevailing
 in Louisiana before the cession to the United States
 were to be regarded as foreign laws, which the courts
 could not judicially notice, the titles to lands
 in that State, would become unstable and insecure.
 And their validity or invalidity would in many

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instances depend upon the varying opinions of witnesses, and the fluctuating verdicts of juries deciding upon questions of Law, to which they could not from the nature of their pursuits, and studies, be supposed to comprehend." Now if all that was intended by the Court was, that the construction, the ascertainment and determination of the force and effect of a Foreign Law, were not matters proper to be referred for the decision of a jury, and the proof of such Law was not for them, but for the Court, then the decision would be in accordance with the settled doctrine. *Consequa vs Mellong. Peters c.c. Repts. 225.* So also if the Court intended to decide, that the Courts of the United States would notice judicially the laws of a State, and that the laws in question were to be regarded as the laws of Louisiana, by virtue of their recognition as such, by the judicial tribunals of the State, the particular point now mooted not be embraced in the decision: for in the absence of any means by the publication of the decisions of the tribunals of Louisiana. I do not know what those decisions are. But if the Supreme Court in the case on 11th Nov. above cited is to be considered as deciding that because the laws of Spain once existed in Louisiana and continued to control, and were to constitute part of the titles which were made under them, to many citizens then subjects of Spain, but now of Louisiana, they were on that account, now to be regarded as the laws of Louisiana and not as foreign laws, then it seems to me, that the decision is not in accordance with, but contrary to, the prior determination of the Court so expressly made, that I do not think it would have been overruled without making the slightest allusion to it. In the case of the United States and *Miggins* reported in 14 *Peters* 345: brought up from Florida and decided under an Act of Congress, requiring, as the act 3rd March 1851 does, the claims to be adjudged and determined, among other things, by the laws usages and customs of the former Government, the opinion of the Court contains the strong language which I quote. Much evidence was introduced to prove the practice and rules in use in

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the offices of the Spanish Government, from which titles to lands issued. We think the evidence was admissible: the existence of a foreign law especially when unwritten, is a fact to be proved as any other fact, by appropriate evidence. The Spanish Province of Florida was foreign to this Country in 1815 when the transaction referred to, purports to have taken place. The practice of the Government in disposing of the public domain may be proved by those familiar with the customs, there is in the record very satisfactory proof by witnesses of the laws and customs governing the Province at that time. If the Court in this case had merely declared that such evidence was admissible, and that the admission of such proof, even to establish a matter of law, which would be judicially noticed without such proof, was not ground of error, being only a superogatory, doing no injury, but perhaps offering facility to the Court in coming to the accurate knowledge of it, then nothing could be deduced from the decision material to the question, but the language is strong and emphatic in the declaration of a positive rule of law upon the subject. It may be that the decision in the 11th of Howard goes to the extent of setting this question against the view taken in 14 Peters, tho' I am inclined to the opinion, that it was founded (so far as it goes beyond the overruling the allegation of error in the Court below for refusing to submit the question to a jury) upon the fact, that in Louisiana, the former laws of the Country were continued in force, after the change of government, whereas in Florida as in California the English Common Law is adopted by the Legislature as the fundamental rule of law precedent. It can not fail to be observed, that the remarks made by the Chief Justice in delivering the opinion in 11th Howard, as to the consequences of a different course, from that pursued by the Court below, have no application unless they relate to the determination of the fact and effect and construction of those laws by a jury, instead of by the Court; because whether they are noticed judicially or introduced and proved to the Court, the result would be the same as to the stability and security of titles, for in

either case, the Court and not the jury, would ascertain and expound them, and the same stability and security be attained, in the one case as in the other.

The next legal ground to govern us in our decisions is the Principles of Equity. What meaning is to be attached to the term "principles of Equity" whenever they occur in any act of the Congress of the United States, I apprehend admits of no doubt. They are those principles which form that venerable fabric known to the American people as the System of Equity Jurisprudence. It is a monument whose chief corner stone was laid by Lord Hardwick, but whose superstructure has been gradually erected by the cooperation of the brightest intellects, and purest characters, who have adorned the ermin. Many of its proudest contributions have been furnished, by illustrious citizens of our own Country, who have left their works behind them. In this department of human excellence, the tribute of gratitude should always be paid to the names of Marshall, and Kent and Story. It will be our humble duty to make the application of those principles, to the cases as they arise; taking care in doing so, not to forget that Equity illustrious as she is, is still but a handmaid to the Law, and one of her cardinal Maxims is *Equitas sequitur legem*.

The last ground of law enumerated in the Section of the Act mentioned to govern us in determining on the validity of claims is the decisions of the Supreme Court of the United States, so far as applicable. In entering upon the consideration of this ground of appeal I will remark that the Opinions of that honored Tribunal ought to command the respect of all in these Jurisdictions, and is not only that general obedience enjoined upon us, but especial reverence is had to that body of learning, which has through years of patient investigation, been amassing in their Reports, upon the various questions of Public Law, and private rights, arising under the Statutes, by which we acquire foreign territory and upon acts of Congress passed in reference to them: and especially to those decisions, which have been made upon laws passed after, and with

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reference to the Treaties of Paris and Washington, by which we acquire Louisiana and Florida. To determine the applicability of these decisions to questions arising under the Treaty of Guadalupe Hidalgo by which we acquire California, and the Act of the 3rd of March 1851, it is proper to compare those Treaties and laws with this last Treaty and Act of Congress. The stipulations of those Treaties so far as involved in this matter, I will briefly state. In the 2nd Article of the Treaty of Paris the terms of cession of public domain are as follows. "The Islands belonging to Louisiana all public lots, and squares, vacant lands &c which are not private property," including by the strongest implication a cession to the United States of any private property. In the 3rd Article, after the stipulation to incorporate the inhabitants in the Union, with the enjoyment of all the rights advantages and immunities of citizens of the United States, it concludes with the words "and in the mean time they shall be maintained and protected in the free enjoyment of their liberty, property and the religion which they profess. By the Treaty of Washington, in the 3rd Article as in the Treaty with France a cession is made of all Islands, vacant lands &c which are not private property. And a special Article is introduced being the 8th, that all grants of land made before the 24th of June any 1818 by his Catholic Majesty or by his Apostolic Delegates in the said Territories, and all by his Majesty to the United States shall be ratified or (as now understood) stand ratified and confirmed, to the persons in possession &c. to the same extent, the same grants would be valid if the Territories had remained under the dominion of his Catholic Majesty. By the Treaty of Guadalupe Hidalgo, the right of private property of the former inhabitants is protected, at least as far as the Law of Nations would have protected it, with out any provisions in the treaty. The stipulation of the 9th Article, which is the only one applicable to the case of persons occupying the territories of the claimant in this case, has been interpreted to mean a stipulation of maintenance and protection in their property as well after the admission of the State into the Union as before. The Acts of Congress passed with reference to the land acquired under those treaties

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and which have been the subject of judicial ^{construction} in the cases specially referred to, in the act of the 3rd of March 1851, as being one of the governing rules of our decisions, are first, the act of the 26th of May 1824 entitled "An act enabling the claimants to lands within the limits of the State of Missouri and Territory of Arkansas, to institute proceedings to try the validity of their claims: by which the courts were opened to decide on claims under the treaty of Paris of 1803, of a certain class which were not perfect, but which might have been perfected into a complete title, under and in conformity to the laws usages and customs of the Government under which they were originated, had not the sovereignty of the country been transferred to the United States. Second, an Act of the 23rd of May 1828 extending with some modifications, the act of the 26th of May 1824 over Florida. And third, the act of June the 17th 1844 extending over Arkansas Missouri Louisiana and those parts of Mississippi and Florida rivers. By the provisions of these laws any grant, conception, warrant or order of survey legally made, granted or issued and which might have been perfected into a complete title but for the change of sovereignty, under and in conformity to the laws usages and customs of the Government under which they originated, could be presented to the United States District Court &c. The treaty of Guadalupé Hidalgo, and the Law of Nations must be conceived to impart the same sanctity to private property in California, as is conferred upon it, by the treaty either of Washington or of Paris. The act of the 3rd of March 1851 authorizes the presentment before the Board of any right or title derived from the Spanish or Mexican Government. It is necessary before we are authorized to adopt any decision of the Supreme Court of the United States relating to the validity of titles, to see to their applicability. What is there in the acts above recited to which gives a more enlarged scope of adjudication under them, than is given under the act of the 3rd of March 1851? The terms, any grant, conception, warrant, or order of survey, are not more comprehensive if as much so, as those adopted in this act under which we are now acting, viz: any right

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or title. If no property of any kind were injured by the laws, usages and customs, in the case of grants, conceptions, warrants or orders of Survey, neither the Treaties, nor the Law of Nations, would require them to be regarded; nor does Congress by her Acts profess that she would be authorized to maintain and protect any thing less than an inceptive or imperfect right. Those terms, then, in those different acts, are of equivalent signification. In 11th Howard 580 the Court say "The word title in our Statutes, on this subject, expressly means equitable rights, short of complete grants, and perfect titles. It means Equity emphatically. In the act of 3rd of March 1851 it means that much beyond all doubt: and not being qualified by the controlling terms, which those Acts contain, it means more than mere Equity, that is, full and perfect titles, also. The want of applicability of the decisions of the Supreme Court of the United States, to the questions arising before this Board, cannot be founded on any difference in the cases, arising from the Law of Nations, the Treaties or the acts of Congress under which they were made; all those concur in one point, which is, that all property, of the former inhabitants, shall be maintained and protected, to the extent, that it existed under the former Governments. It is true as was to be expected in a new field of legislation, that there was in some instances, inconsiderate, not to say harsh and oppressive legislation, that there were in some instances, on occasions but its general tenor, which it sustained the rights of the Nation, has preserved good faith towards the former inhabitants of the cession County. In the general there has been a magnanimous liberality extended, both as it regards political privileges, and the property, of those who were thus about to become adopted children of our Great Republic. The conduct of the Nations of local idiom, was one peculiarly calculated to command not only the best faith *optima fides*, but the sympathy and fostering care of the new Government. They were just conquered, and then transferred in violation of their feelings, of their prejudices, of their native habits, from a Government whose presence they had never felt, under which they were at least enjoying the homes of their birth. They were driven onto strangers

hands, of whose laws or whose language and of
 whose disposition towards them, they were wholly
 ignorant; trembling with anxiety at their new position
 and looking forward with fearful apprehension for
 further chances and changes in their fortunes. Not un-
 mindful of the obligations of humanity, and of the
 Law of Nations, which has ever been respected as the
 common arbiter by all civilized Communities, commencing
 the course of the Congress of the United States, commencing
 with the legislation on the subject of the Territory
 embraced by the cession of the State of Georgia, to
 the United States in 1802 down to the acquisition of
 this Country, has been marked by a spirit of progress
 in liberality and relaxation, in favor of the claimants
 or grantees of Land under their former Governments.
 This favorable consideration of all bona fide claimants
 manifests itself, by embracing in subsequent acts
 descriptions of claims, not recognized by former
 acts; by extending the time within which notices
 of claims, and the production of evidence were requir-
 ed, by giving authority to the Federal Tribunals
 and Boards of Commissioners, not only to decide upon
 such claims, but to reverse and confirm, such as had
 been rejected. Nor is this last act of the 3rd of March
 1851 under which we are now sitting, an exception
 to this general rule of liberal legislation. It expressly
 recognizes in the broadest terms any right or title,
 which terms I have shown are at least as compre-
 hensive, as those used in any former Act. Nothing
 more could be done than this, except to say, that
 claimants should be confirmed in their claims
 without any right or title. To have exercised more
 liberality on this head, would have been what
 neither the Law of Nations, nor the Treaty required,
 and what justice to the people of the United States
 at large, would have utterly forbid. Neither the
 Law of Nations, nor the Treaty of Guadalupe An-
 dalgo (which last indeed, is exceedingly meagre
 on the subject of the property of those who should
 remain in the Country, and become American Citizens)
 can act like alchemy, and convert every thing even a
 permissive occupancy, into a full perfect and
 complete title in fee simple. Whatever scintilla
 of title there was under the former Government, is to
 be protected and maintained. But it is necessary

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that the right should be made known, and not rest upon the ipse dixit of the claimant. Some mode must be adopted, to ascertain what is to be protected and maintained; and to my mind, that which the Act of the 3rd of March 1851 provides, is an easy and simple, and equal way of ascertaining the existence of any right or title; the ascertainment of which, was of much more pressing importance to the former inhabitant, as every days experience demonstrates, than to the Government of the United States. Having taken this censorious view of former Treaties and laws, and compared them with that of General Sillago and the Act of the 3rd of March 1851 with the view of deciding upon the applicability of the decisions of the Supreme Court of the United States to the claims before this Board, I will here state generally, the two great leading principles resulting from those decisions; being the particular points established in them, to be applied to the several propositions or questions, as they may come under consideration, in the further view of the case. The first of those great leading principles was announced by the Court as early as the year 1836 in the case of Smith vs The United States 10 Peters 330. 331 and is reaffirmed in 11 Howard 88. In the last case the Court say, in reference to this principle "This was the rule laid down for our government in 1836 in the case of Smith vs The United States 10 Peters 330. 331 and which has been uniformly followed since" as the language of the Court introductory of the rule, as well as in laying down the rule itself varies slightly, I will quote it, as it is laid down in both instances. In 10th Peters it is thus "In every case arising under the law, one general question was presented for the consideration of the Court whether in the given case, a Court of Equity could acceding to its rules, and the King of Spain consider the conscience of the King so affected by his own or the acts of the lawful Authorities of the Province, that he had become a trustee for the claimant, and hence the land claimed, by an Equity repose, amounting to a swarance of so much from his domain &c. In 11 Howard 88, it is laid down in the following words. "By the act of 1834 we are required to exercise the power of a Court of Equity

and to adjudge in the given case, whether a Court of Equity could, according to the rules and Laws of Spain, consider ~~the existence~~ the concurrence of the King, so affected by the acts of his lawful Authorities in the Province, that he became a trustee, for the Claimant, and held the land claimed, by an Equity upon it amounting to a Swornance of so much from the Public Domain, before and at the time the Country was ceded to the United States." The second general rule is, that which is adopted by the Court in many Cases, as in 5th Wheat. 359. 4th Con. Repts. 681. 3^d Peters 92. 15th Peters 215. and which although not in the least departed from, may have the Supplemental addition, contained in 11th Howd 127. I will give the general rule as laid down in 15th Peters 225, in the words of the Court "We apply to the case the laws and Ordinances of the Government under which the claim originated; and that rule which is of universal application in the construction of Grants which is essential to their validity, that the thing granted, should be so described, as to be capable of being distinguished, from other things of the same kind or be capable of being ascertained by extraneous testimony." The Supplement to which I referred above is furnished in 11th Howd 127 in which case the conception being wholly indefinite in itself, needed if sustained at all, something more to constitute such a Swornance from the public Domain, as is always required. Those additional requisites, are said to be supplied, either by actual survey, or by some ascertainable limits, or mode of separation recognized by a competent Authority.

Having stated with as much brevity as was consistent with propriety, the grounds upon ^{which} the Board is required to act, both as to the evidence and the law in deciding on the validity of the claims, I will now proceed to consider, whether in the view of those principles, the claim of the present claimant is valid or not. It is founded upon a Grant bearing date on the 1st of April 1836 signed by Nicholas Gutierrez as Political Chief or Governor at the time, of the Territory of Upper California. There is no question of the genuineness of the grant, whatever may be its legal effect, nor of the fact that Gutierrez was the Political Chief, or acting Governor at the time. The evidence on file, from the Public Archives, proves all those facts.

Whatever Royal Decrees of the Spanish Monarchy of the Spanish States, of the Empire of Mexico, under the domination of Turbide, under the name and style of Augustin the 1st, or of the Mexican Republic may have been in force prior to the 18th of August 1824, there is no doubt, that at the date of this grant, the Decree of the Mexican Republic, of the last mentioned date and the Ordinance of the 31st of November 1828 issued by the Federal Executive of the Republic, in pursuance of the 16th article of the said Decree of the 18th of August 1824, were in full force; that the grant in this case was made, with especial reference to that Decree and Ordinance; and just as little doubt that it rests on that Decree and Ordinance for its only support. Other Decrees concerning the disposition of the public domain, and the settlement or colonization of this country, we know existed, prior to this last named Decree and Ordinance, and so far as they have not been expressly repealed by subsequent legislation, or by necessary implication, from their total incongruity or conflict with those, they certainly still remain in force. However, this Decree and Ordinance, as to rural Grants, like the one now under consideration cover the whole subject so completely, as to leave little else, for any prior Decrees to operate upon; their chief efficacy consisting, in the right, which they afford in the construction of that Decree and Ordinance. As constant reference must necessarily be made, to the Decree and Ordinance under which this grant was executed, to decide on its validity; for greater convenience, and out of abundant caution, in view of their once having been foreign laws, however they may now be regarded, that have been introduced into the record by the Law Agent of the United States, duly authenticated from the Archives, in the legal custody of the Secretary General of California, and constitute a part of the evidence in this case. This Decree of the Mexican Congress, even a General Law, upon the subject of Colonization, which professed as its chief end and aim the settlement (cultivation or inhabitation) of the vast public domain of the Nation, by means of Grants in full property to her own Citizens, and foreigners provided they should submit themselves to the Laws of the Country. The second section of that Law provides "Those lands of the Nation are

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the object of this Law, which being neither the property of any individual, nor belonging to any Corporation or Town, may be Colonized." The third section declares "For this purpose the (Congress) legislatures of the States shall form with the greatest dispatch, laws, or Rules of Colonization, within their respective demarcations, conforming themselves in all respects, to the constitutional act, the General Constitution, and the rules established in this Law. The fourth section is in these words "The Lands comprehended within twenty leagues bordering upon any Foreign Nation, or within ten leagues of the Sea Coast (Luz Littoral) shall not be colonized without the previous approbation, of the Supreme General Executive Power" The sixteenth section of the decree is in the words "The Executive in conformity with the principles established in this decree shall proceed to the Colonization of the Territories of the Republic. This Decree was enacted as stated above on the 18th of August 1824 after the establishment of the Acta Constitutiva de la Federacion, which was on the 31st of January 1824, and before the establishment of the Constitution Federal de los Estados Unidos Mexicanos the formation of which however was clearly in the mind of the Congress, at the passage of this Decree. The Executive did not proceed to the Colonization of the Territories of the Republic, until the 31st of November 1828, when he promulgated his general Decree or Ordinance, for that purpose. Independently of the direction contained in the 16th section of the decree of the 18th of August 1824, by the 15th article of the Acta Constitutiva he was required to make Decrees or Ordinances "for the better Execution of the Constitution, and General laws", and also by the second article of the 4th Title of the Federal Constitution of the Mexican United States, it was his duty to make Ordinances, Decrees or Rules "for the more exact fulfillment of the Constitution, the Acta Constitutiva and General Decrees. He prefaces his Ordinance of the 31st of November 1828 with the following preamble, "It being provided in the 16th article of the General Decree of Colonization of the 18th of August 1824, that the Executive, in conformity with the principles established in said Decree, proceed to the Colonization of the Territories of the Republic; and it being most proper, in order to give to the said article, the most adequate and exact fulfillment

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to dictate some general rules, that its execution may be expedited, in the cases that may be occurring. The E. S. President, has thought proper to determine on the following articles. The first article in that Ordinance is in the following words "Authority is given to the Political Chiefs, that in conformity with the decree of the General Congress of the 18th of August 1834 and under the conditions therein expressed, they may grant vacant lands of their respective Territories, to emigrants, families, to individual persons, whether Mexican or Foreigners, who wish it, to cultivate or inhabit them". The last article of this Ordinance, relates to Missions, and is as follows. "In the Territories in which there are Missions, the Lands which they occupy, cannot be colonized at present, and until it be determined, if they ought to be considered as the property of the establishments (reducciones) of Neophytes, Catechumens and Mexican Settlers". To disembaras this case from any consideration of the objection on the sense of this last article, I will observe here, that the Record contains a disclaimer of any right on the part of the Mission, and the proof is, that the Land selected and granted, was not occupied by the Mission.

This Statement of the Decree of 18th August 1834 and Ordinance of 31st Novbr 1838, will suffice to give a general outline of the scheme, or plan of granting, the Mexican Domain under which the claimant claims his title, as other articles of them, may require to be considered in the progress of this Opinion, they will be introduced into it.

The first question which presents itself at the threshold of our inquiry into the validity of the title of the claimant, is that which grows out of, the Fourth Section of the Decree of the 18th August 1834, and will be called, for convenience of expression) the ecclesial league question. The discussion of this question, (on the solution of which depends such vital interests) by the Counsel in this case, by the Law Agent of the United States, and by other gentlemen of law, who have submitted cases, now in our hands for decision, has been marked by that diligence of investigation, legal acumen and forensic ability which was demanded by the subject and fully met in its argument.

Before entering upon the consideration of this first point I will suggest, that it is by no means clear to my mind

that the land claimed in this case, lies within the ten littoral leagues. There does not appear in the evidence (indeed the contrary is conceded on all hands) that there was any line, marked out by the Mexican Government, that would indicate the region of Country embraced within them. It would be very difficult to ascertain with any precision, by means of an actual measurement, the tract of such a line along the coast of California: and having been never in any manner ascertained, I suppose it will be conceded without controversy, that we cannot accurately know it, except in those cases where the Coast is one of calls in the Grant. The evidence in the cause, of the witnesses, is such as we might expect from the nature of the thing exceedingly unsatisfactory. The Law Agent of the United States, relies upon a document accompanying the Expediente, as found in the Archives, being the return of the Ayuntamiento of the City of Monterey, to whom was referred, by the Political Chief, the question of the extent of the grant to the petitioner; which return states, that the Land is within the ten littoral leagues. The grant was made by the Governor notwithstanding. But it is very apparent, that his grant is no evidence that the return was untrue, for the fact where self evidence presented no obstacle to a grant, as the evidence shows, particularly the document in evidence from the Archives containing the proposition of Jimeno, and the proceedings there upon it, in the Departmental Junta in 1840. It may be that the investigation of the Ayuntamiento of Monterey, may bind the claimant as res adjudicata, tho' I do not think so. Yet as that impression may be erroneous, and the question has been treated as tho' it might arise, and has been fully argued, I will proceed to give my opinion upon it. The solution of this question, requires that we should examine narrowly, both the decree of the 18th of Aug. 1834 and also the Ordinance of 21st Nov. 1828 which are in fact necessarily connected; the latter merely educating for practice, all that was involved in the former, which was its only legitimate office. It has been contended by the Counsel for the claimant in this case, that whatever else might have been the object, or motive of the fourth section of the Decree of 1834, it was not intended to embrace

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a Native Mexican Citizen of which class is the claimant now before the Board. In support of this proposition, a general review was made of the course pursued by the former Government of the Country, in regard to the discrimination always made, in favor of her Native Citizens, in granting of the public Domain, and in the Colonization of her Provinces. It is very apparent from this Examination, that the policy of the former Governments of the Country, in this regard, has been various at different periods, and consequences of her efforts sometimes exhibiting the exclusive reign of Sacerdotalism in the days of Sycurus, or of the Celestial Empire, and at others, relaxing it so far, as almost to abolish all distinction. There does not seem to me, to have been, at least since the Independence of Mexico, any such fixed, and settled policy in this matter, as to rely upon it, with any confidence, as a guide in the interpretation of this Decree. It is safer to determine her policy from laws enacted at the given time, than to construe her laws, by any supposed general policy upon the subject. An impression might indeed be taken up, from the first section of the Decree, that the only object of the bounty of the Government, was foreigners; that they were the chief instruments intended to be used in the Colonization of the vacant lands of the Republic. This would be however a very erroneous deduction. In looking at the Decree itself, I can perceive no distinction between foreigners & Mexican Citizens, except that which is suggested, in the 9th section, where in the distribution of lands, a preference is required to be given to Mexican Citizens; which involves I think a distinction in their favor, over the foreigners, whose introduction was contemplated. Whatever doubts may exist as to the intention of the Legislature contained in the Decree, it all vanishes when we look at the provisions of the Ordinance which is its practical exponent. The first section of the Ordinance is clear, and comprehensive and authoritative exposition of three prominent and essential matters, necessary to the execution of the Decree, whose adequate fulfillment the President had just declared his intention to accomplish. The first in his Order of announcement, is that the sole and exclusive agent in the function of granting, shall be the political Chief of the Territory. The second is, that the subjects of his grants, are the

vacant lands of his Territory, and the Third is that those grants are to be made to Empressaries, Families and individuals persons, whether Mexicans or Foreigners. Whatever was intended to be granted by the decree, I feel bound to believe, was with the exception of the preference indicated in the 9th section of it, intended to be granted, indifferently to Mexican Citizens and to Foreigners.

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The next point which I well consider, is whether the Sanctions of the Republic were intended to be embraced in the terms of the fourth section of the Decree of 1824. Its application to lands within the prescribed limits situated in the States, is evident: but that it was intended to embrace those similarly situated, in the Territories, is not I must confess so free from doubt, tho' such is the inclination of my mind. With regard to the States, without such a provision, all power to control the matter, would have been parted with. But that consideration does not prove, that the generality of the terms, should be so restricted, as to confine them to such lands, within the States. This policy of the withdrawal of her people, from contact with, and facility of access to Foreign Nations, the neglect of which might involve the Nation in a general war, by broken treaties, and being so involved, might make her more vulnerable, and exposed, to maritime incursions along her Coasts, would seem to apply, as well to the Territories, as to the States. In speculation upon the policy, and motives of this provision it is possible, that there might have entered into it, one consideration, which was peculiar to the Territories. The Congress may have supposed, that in devoting the whole vacant domain, by this permanent Decree, to gratuitous distribution, she might cut off any aid to her future fiscal exigencies, from the source of her public domain; and may have thought it wise, and prudent, to submit to her Executive head, the determination of the economical question, whether the highest interests of the Republic might not be best subserved, by withholding the portion of it, for the purpose of sale. But whatever may have operated on the mind of the Mexican Congress, I have come to the conclusion, not however with the fullest confidence, that they submitted

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to the will of their Executive, the future Subjectin
of that portion of their Country, whether in the States
or the Territories, to the process of Colonization.
The next, and as it occurs to my mind the most
important branch of this question, is whether the
Federal Executive, has exercised the power with
which he was invested by Congress in that Section
of the Decree. It is certain that the mode in which
he shall give his approbation, is not prescribed by
the Law, and I am not prepared to say, that any
mode, which he might choose to adopt, however
it might differ, from my own views of the comp
arative efficacy, in accomplishing the end designed,
would not be competent to him to select. In view
however of the mode, in which he was required
both by the Acta Constitutiona, and the General Constitu
tion, when carrying out a general Law of the Repub
lic. I should think that the one he pursued, would
be the most natural one, for him to adopt on this
Occasion. I have already had occasion to state that,
both by the Acta Constitutiona, and by the Federal
Constitution, it was his duty to make Ordinances
decrees and rules, for the more exact fulfillment of the
General Laws of the Republic. It seems to me that
the Federal Executive might well have executed
the trust reposed in him, by the Constituent Congress
of 1824, by a general Ordinance. The matter confi
ded to him was to determine, whether the region of
the public Domain contained within the described
limits, should be subjected to Colonization. That
determination, which had been doubly confided
to him, by Congress, from the consecration of high
Official Station & responsibility, to the Republic,
could not be, by him, devolved upon another.
The power and authority conferred upon him, was
a high public trust, which he could not delegate.
But in relation to the process of carrying it into exe
cution, by establishing the details of Colonization,
it was his peculiar duty; and it was just and compe
tent to him, to do that, in relation to the lands which
were devoted by his will to Colonization, as to perform
the same functions, in relation to those so dedicated
by the will of Congress, as expressed in their decree
of 1824. The vice in the argument adverse to this, consists
as it seems to me, in confounding the Act of the will

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of the Federal Executive, by which he could subject that region to settlement, with the means which he should employ to carry that will into execution. The objection to the mode of carrying out his purpose of settlement, after that purpose had been formed, is more properly a criticism upon the fitness of the means which he adopted, than an argument against his power to communicate his will, by a general Ordinance. He may in reviewing the transaction, suppose that the policy which dictated his interference with that Power, would have been better achieved, if he had exercised as that very individual before he could be permitted to settle within that line of country, should present himself personally to the Executive and obtain a special permission. But the Executive of Mexico may have thought, that all which the public interest required in 1828 could be achieved by a less onerous and less delatory process. He may have thought, that the public security would be sufficiently guarded in the case of individual Mexicans or Foreigners, by the Order through which he had required them to pass, from the first presentation of their petition, to the Police Chief, to the ultimate sanction of the Executive which last he has proceeded, in case of a reasonable objection to their pretensions. He may have thought, that in case of an attempt to introduce through the medium of empresario Speculations and excessive population of Foreigners, the check which he had provided, of a personal application to himself, before the issuance of an irrevocable grant, would sufficiently protect the interest of the Republic, from such an inordinate influx.

That the Federal Executive, for aught that I can see, in the Law of 1824, might have acted in that manner, thus subjecting that region to settlement, by the promulgation of his will, in a general Proclamation, I feel well assured. A much more important question will now demand our consideration, and that is, admitting his competency to do so, whether his Ordinance of the 31st Nov 1828 contains that expression of his will. This enquiry we will now proceed to make.

At the threshold of his entrance upon the city of

of carrying into execution the general Decree of August
 1824, the Executive declares in the caption or heading of his
 Ordinance, what it is he is about to do, He intitles it
 General Decree or an Ordinance for the Colonization of
 the Territories of the Republic. This is transmitted to
 California and is found among the Archives of the
 Territory. Now this is significant of one fact, that he
 proposed to extend the benefit of the Decree to Cali-
 fornia. And yet it is true, beyond controversy, that the
 object of the Decree, could not be effected in this
 Territory, which was settlement and cultivation to
 some extent at least by families, except within the
 ten littoral leagues. If this was the case in 1840
 as the record verifies by reference to the Statement
 of Jensen, how much more was it so in 1828. At
 that time from the wild and savage nature of the
 interior, infested by hordes of hostile Indians, it would
 have been next to impossible, to have introduced
 cultivation or inhabitation by families, so far from
 the free towns, the Missionary Stations the settlements
 already established in the Territory, and from the
 protecting Military Presidios: all and very one of
 which, we learn were within the very belt of
 Country, which is now supposed to have been with-
 held from Colonization! It seems to me that such
 could not have been the intention of the Executive.
 The very first article of the Ordinance, as well as
 the last, serves to satisfy my mind, that he did
 not intend to exclude it. The first article of the
 Ordinance specifies the object of the proposed
 Colonization, to be the vacant lands of the Territory,
 and what they were, the Decree which he proposes
 to be putting into activity, had particularly designed
 as those lands of the Nation, which not being pri-
 vate property, nor belonging to any corporation or Town
 could be settled. The last article leads to the same
 conclusion as to the intention of the President. That
 article declares that the lands occupied by the
 Missions, should not be Colonized. This is a strong
 negative pregnant of the affirmative declaration,
 that such of the lands as were partitioned or adjacent
 to the Missions, if not actually occupied by them,
 might be Colonized, and as we have seen, were such
 in the ten leagues. Not the most remote allusion
 is made, from which an inference can be drawn

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to counteract the effect of this strong language. If he intended to withhold this Section of the Country from Settlement, which was known to rest in his Excellency's will, he would not, I would think, have been even equivocal in his language, much less, have used such as conveyed a contrary intention. Nor can we suppose, that a matter which constituted so material a part of the Decree which he was carrying out, and of the subject of his action, would have been forgotten by him: and if not forgotten, how easy and natural, to have restrained the general authority to grant, by adding to the words "Vacant lands in your Territories" the words, "Except within the letteral and border leagues". He has not distinguished between the vacant lands, which are within, and those which are without, the supposed lines, which divide them. He has used no terms indicating any intention to make any such distinction, and the rule of construction in the Spanish Law is, "ubi lex non distinguit, nec nos distinguere debemus". I repeat then, that vacant lands in the Ordinance must be understood without any words to distinguish them, to signify the same thing that they do in the Decree, which it purports to carry out; and what they mean in that Decree, is declared in the second Section, to be all those which are not private property. &c. If however there be any doubt as to the true meaning of the Ordinance, it vanishes when we look to those accompanying facts which are a legitimate ground of interpretation. The strongest evidence is found in the contemporaneous conduct and conduct of all concerned in the execution of the Law and Ordinance, of the intention to authorize the Settlement to proceed, within the letteral leagues. The Potosi Chief and Governor who were selected, and appointed, as agents to carry out his Ordinance, by the Executive; and the Territorial Deputations, and Departmental Juntas, who were also to cooperate in the execution of his instructions, with one accord, have put the same construction upon this Ordinance. One Potosi Chief or Governor might have erred in this matter, through ignorance or from some improper motive; and so of one body of the Deputation or the Junta; but that all should have done so, through a long series of years and

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Succession of terms, it is difficult to believe. And
 the evidence of this construction is heightened to the
 greatest degree of moral and legal certainty, by the
 acquiescence of the Executive, after, we must presume
 we he had knowledge of this construction of his
 regulations; and never intimating so far as we can
 learn, that there was any error, in this conform
 course of proceeding. His knowledge of all this is a
 fair presumption in law, from the requirement of
 quarterly returns to be made to him, of all the
 Grants that were made, and the facts relating to
 them. It is not often we find such a body of con
 temporaneous Expositions of a doubtful law. No
 counterence this construction of the Ordinance of 1828
 as deduced from the contemporaneous and continuous
 acts of the Officers of the Government in the Territory
 to whom its execution was expressly confided by the
 Federal Executive; and indeed, to establish, by the
 same kind of evidence, the opposite construction,
 The Law Agent of the United States, has introduced
 from the Archives, a record of proceedings had before
 the Departmental Junta, on the 18th of April 1840
 consisting of a proposition submitted to that body;
 a report of a Committee upon it, and their adoption
 of that report. The object of the proceeding seems to be
 to procure the confirmation by the General Government,
 of the grants of Land within the ^{ten} leagues, and
 of Mexican property, made by the Political Chiefs &
 approved by the Successive Deputations and Juntas
 down to that time, under the Law of 18th August
 1824 and the Ordinance of 1828. This whole proceeding
 concludes to prove, that there was in the minds of
 that body, at that time, to say the least of it, great
 doubt and anxiety on this subject. It is fair to pre
 sume, that such was the state of their minds at
 the time, as there is no ground to believe that any
 thing but honest apprehensions of the uncertainty of
 the Land titles of the Territory, inspired their action.
 But at the same time, that it discloses this doubt &
 feeling of insecurity, it also supplies other facts
 which outweigh, as evidence of the construction of
 the Decree, and Ordinance, the proceedings themselves.
 They furnish full proof of the facts, that the Political
 Chiefs, from the commencement of their action under
 that Decree and Ordinance, in 1824 down to that time,

have granted lands by definitive titles, within the
 territorial leagues, and that Territorial Deputations &
 Departmental Juntas, had approved of such, during
 the whole of the same period. It proceeds further,
 that there were no vacant lands, except such as
 were so situated, which could have been colon-
 ized: Because the said Decree declares, "it is all
 territorial, and the greatest part thereof, is acknowl-
 edged as belonging to the Missions. Now the repea-
 ted acts of Political Chiefs or Governors, and of
 the Deputations and Juntas, in the execution of
 their duty, under this Decree and Ordinance, in
 the scale of evidence greatly preponderates this single
 act of that body; even if their resolutions and
 preambles had contained the express avowment,
 that they did not consider the Decree and Ordinance
 as furnishing any authority to make the grants all-
 oted to. But I do not condemn them as express-
 ly declaring that belief, but they are rather argumen-
 tative and deprecatory of the evils of such construc-
 tion. Furthermore, if what is produced as the ans-
 wer of the General Government to their resolutions,
 is in fact a response to them, (which however I can
 hardly consider as such having any connection
 with them) it proves one of two things, either that
 the Executive of Mexico, did not perceive any rea-
 son for the apprehensions of the Departmental Juntas,
 or that they were supremely indiffereant to the feelings
 and prosperity of the people of California and
 the latter, we are not justified in imputing to them
 the views and considerations above suggested relate
 to the construction proper to be placed upon the Decree
 and Ordinance, by virtue of which this grant was
 made. If I should be wrong in the conclusion to
 which my mind has arrived, that the Decree and
 Ordinance ought now, to receive the construction
 which does rest upon them, at the time, by all con-
 cerned in the subject to which they relate, and
 which was acquiesced in so long, by the former
 Government; it is worthy of consideration, whether
 1st That approbation of the Federal Executive may
 not be presumed to have been given; and secondly
 whether, even if there were no such approbation or
 previous consent either in fact or in presumption
 of Law, the Principles of Equity, under all the

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circumstances of this case, do not require that the claim should now be confirmed. As the first of these propositions is founded upon the supposition that the Executive of Mexico, aided by a less public but equally competent and effectual mode of communication, have imparted the authority to the Political Chief, that is, by private instructions, which the Political Chief was not bound to expose, it may not be amiss to bestow some further reflection upon his competency to communicate his consent in that manner.

In the Argument of the Law Agent of the United States the total invalidity of any private instructions is asserted, and the position assumed, that even a public antecedent proclamation by the Federal Executive would not suffice; but that, there must be a direct application for that consent, in every particular instance of Grant. To sustain this doctrine, we were referred to the decisions of the Supreme Court of the State of Texas in the 3rd Volume of the Reports of that State. From the fact, that the State of Texas, composed a part of the Republic of Mexico, and that her judicial Tribunals, have had their minds necessarily turned to the questions arising out of the Decree of the 18th of August 1834, much consideration is due to their judicial decisions upon that subject. At the time of the enactment of that Decree, Coahuila and Texas, together formed a State of the Republic. In obedience to the 3rd Section of that Decree, that State proceeded to the enactment of a Law on the 31st of March 1835 providing for Colonization within her demarcation. By the 7th Article of that Law she provided, that no settlements should be made within the twenty border leagues, nor within the ten littoral leagues on the Golph of Mexico except they be such, as were previously approved, by the Federal Executive of Mexico and for that purpose all future petitions on the subject whether made by Mexicans or Foreigners, shall be referred to the Supreme Government, accompanied with a corresponding Report. In the year 1837, that State by explicit instructions, to her Commissioners of Colonization forbade them to give possession to any Colonist, proposing to establish himself within the twenty border or ten littoral leagues unless he shall present him with a special Order from the State Government wherein the approbation thereof, of the National Government

shall be manifested. The result of this state of legislation is a palpable requirement, that the parties in each case must produce a document, containing the previous approbation of the Federal Executive. In that state beyond all doubt, any grant would be void where the consent was not obtained, as the law directed it, and could not be recognized, unless proved by the evidence, which the law requires. Then the consent must be special in every case, and no presumption of that consent, could be indulged to supply what the law had required to be procured and exhibited. The Judiciary could not dispense with those legal requirements, and hence the decisions in the Supreme Court of Texas, upon those two points viz: the special application to the Federal Executive in case of a grant, and upon the doctrine of presumption of that point, by the Executive, with regard to colonization in the States, as there was in regard to colonization in the States as there was in regard to the Territories, by the 16th section of the Decree. The course to be pursued by the States, was to be one of their own adoption. The Federal Executive could prescribe no rules for the States as to the mode of carrying out that Decree. The State Councils of Texas, adopted the mode of obtaining the approbation of the Federal Executive to colonization within the leagues, special application in every instance. If Councils and Texas instead of prescribing that mode of proceeding, had by a resolution of her Legislature requested the Executive of Mexico, to give his approbation to the settlement of that portion of the State, contained within the border & littoral leagues, in the same manner, that she should adopt for the colonization of the residue of her demarcation, I can not doubt, but that it would have been entirely competent to the Executive to have complied with the request, whether he did so or not; and that a general Ordinance if he had complied, would have been all sufficient to have given the authority, in the meaning of the fourth section of the Decree of 1824 I presume to well be admitted that, the National Legislature, could have at any time, repealed the fourth section of the Decree of 1824. If they had done so, and instead of subjecting the colonization of this portion of the ^{country} to the will of the Executive, they had provided, that it should not be colonized without the previous consent of that Department of the Govern^{ment}.

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I presume that, then it would be doubtless competent to Congress by a general resolution to that effect to have given such approbation, It seems to me that Congress by transferring their power in the matter to the Executive without any restraint upon him, as to the manner of exercising it, gave him the right to exercise his best judgment as to the whole subject. Coahuila & Texas never appeared for any general authority or approbation, but adopted the course which to her seemed best. The question never arose in that State, whether such mode of giving the previous approbation of the Federal Executive, was within the meaning of the decree of 1824. No are the decisions of that Court applicable to the question, upon which I will presently enter, of the presumption of the previous approbation of the Federal Executive. No presumption could be indulged of any agent in Texas, because it was expressly provided by her Statute, that the evidence of that approbation, should accompany the petition of the Claimant, before he could obtain any right whatever, and one of the grounds upon which the presumption rests, if it can be indulged at all, did not exist in Texas; because the relation between the Federal Executive of Mexico, and the Authority of the State of Coahuila & Texas, are by no means identical, with that which exists between that Executive, and the Political Chief of a Territory, to whom that Executive has conferred the general trust as his & the Agent of the Government, to convey a grant vacant Lands lying within it.

It must be conceded, that the Decree of 1824 required the previous approbation of the Federal Executive to Colonization within the border and littoral leagues. It is equally true, that the Officer of a Government cannot alienate the public Domain of that Government, without its Authority. The question now to be considered is, admitting that such Authority must exist, whether or not its existence in this instance, may not be presumed. There cannot be any presumption indulged of the existence of an Authority, in a Public Officer to dispose of the public Domain, where, the public law regulates not only the manner of conducting the proceedings, but also the Authority, and power of the Officer. The case must be brought within the influence of the doctrine laid down by the Supreme Court of the United States, in the case of *Arredondo, Clark*

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Puchman and others, all of which recognized the same principle. Those cases rise mainly upon the power of the King of Spain, to grant the public Domain, as may see in his Royal Decree: and upon the presumption that those Officers, through whose Agency he acts in that matter, will, from their dependence upon his favor, and the fear of punishment, not venture without authority to encroach upon the Royal Prerogative. The whole doctrine is expressed in the following words, taken from the decisions above referred to: "A grant made by a Governor of authority to grant Lands in his Province is prima facie evidence that his power was not exceeded. The Connection between the Crown and the Governor justifies the presumption, that he acts according to his Orders; Should he disobey them, his hopes are blasted and he exposes himself to punishment. His Orders are known to himself, and those from whom they proceed: but may not be known to the world. And further, He who would contravert a Grant, Executed by the lawful authorities, with all the solemnities required by Law, takes upon himself the burthen of shewing that the Officer has transcended the power conferred upon him, or that the transaction is tainted with fraud: These concerns, in the relation between the Federal Executive of Mexico and the Political Chief of a Territory, and that between the King of Spain & his Governor of a Province, many points of resemblance, so far as this particular matter is concerned, though they are not alike in all respects. The point in which they differ most, is perhaps not the one upon which the doctrine was mainly founded by the Supreme Court; and that is, the better dependence of the Governor, for all his prospects in life, to the favor of Government. These facts are common to them both. That during the existence of this Decree in 1824. the disposition of the Land granted, depended upon the sole will of the Federal Executive, which was as free to act, as that of the King, on any of his Royal Domain. That the Political Chief of a Territory, had the same general authority, and was the only Officer (who de have it) to grant Lands, that existed in the Governor of the King's Province. That there was the same unrestrained mode of Communication, of the will of the Federal Executive, as to the disposition of this Land in question, to the Political Chief, as existed between the

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King and his Governr. And it may be that the power of Appointment, or of removal from office of the Political Chief by the Federal Executive, was unrestrained by the Mexican Constitution or practice under it. His power seems to be extensive enough to have framed a strong motive to Obey his Orders and decrees. The 30th Article of the 4th Section, of the Constitution confers a sufficiency of power to admit the relation perhaps nearly enough, to authorize the application of the doctrine of presumption, so far as it rests on that ground. The power conferred upon the Federal Executive to carry out the Decree of 18th Sept 1824 by the 16th Section thereof, and by his general power, under the Constitution to make Ordinances, Decrees and Rules, for the better government of the General Laws of the Republic, his special unlimited power to subject the Lands within the border, and lateral leagues, to settlement by his will; with no Law to regulate and prescribe the manner of Communicating that will, or determination of it, to the agent he might appoint, and did appoint viz; the Political Chief of the Territory; and his power over that Officer, who had the sole granting power of the vacant lands of the Territory, in case of a departure from his Orders, as given in the Constitution cited above: all strongly incline my mind to the conclusion, that in case of a grant made by him, the presumption might well be indulged, that he was authorized to make it. As it is not necessary however, in my view of this case, to decide positively upon that question I decline to do so. This conducts me in the course of enquiry which I proposed, to the consideration of the last matter, connected with this question of the lateral leagues; and that is whether in view of all the matters of fact, and of the Mexican Law, connected with it as presented by the record, it would be consistent with the principle of Equity to refuse a Confirmation of this grant because of locality in reference to the Coast.

The nature of the transaction, between the person soliciting land, and the Government is in effect, as has been frequently said, by the Supreme Court of the United States, a contract; the consideration being in the case now before us, the abandonment of his former home, or residence, and the cultivation and inhabitation of the Land for which he petitions. and whether

according to strict definition, in our Law, it be a tech-
 nical Contract, or not. Yet after the labor and toil
 bestowed upon it, and the long and continued residence
 preventing necessarily the Occupation, and may be the
 opportunity of acquiring any other home, the doctrine
 governing Contracts, may be very appropriately applied.
 Viewing the claimant in this light, it seems to me
 that he may in this case, invoke to his aid the prin-
 ciples of Equity. He desires to avail himself of the
 Laws of his Country to procure a home. He reads
 that Law and sees clearly laid down the terms, and
 conditions, upon which his Government will grant.
 That Law contains a provision, that as to a portion
 of her public domain, although it is not in all
 events, and absolutely withdrawn from settlement,
 yet it can only be devoted to that object by the
 previous consent or approbation of the Federal
 Executive of the Republic. He reads that the
 Federal Executive is required to carry out that law
 into practical effect. He is a native perhaps of
 California, born in the only inhabitable part of
 the Territory. After the passage of the Decree of 1834
 he waits with patience for the necessary Ordinance,
 or Regulations of the Executive. At the end of about
 four years, that Ordinance is promulgated. He learns
 from those who are the Officers appointed, to grant the
 vacant Lands of the Territory. He sees distinctly de-
 clared what he is required to do, to obtain a portion
 of that vacant Land. With an honest purpose of
 mind, to comply with all that he is required to
 perform on this part, he approaches the Political Chief
 of the Territory, and submits his application.
 Among other things to be considered, by the Law, is the
 relative position of the land which he solicits, to
 the Coast of the Pacific. The land he solicits is in
 that section of the Country, which alone has been
 redeemed from the Savages, and capable of being
 used as the Law requires. He knows that the land
 is grantable, if the Federal Executive shall have con-
 sent to be so. The Political Chief with all this before
 him, and with information that the Land is within
 the ten lateral leagues proceeds to make the Grant.
 Is not the Grant by the Political Chief made under
 such circumstances, in effect, an affirmative response
 to the question, "has the approbation of the Federal

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Executive been given to the granting of the Land? That question is asked by the petition, and is answered by the Grant. I cannot think that this claimant is chargeable, with any violation of Law. He must be considered in this case, to have acted with good faith at least. The written Laws and published Ordinances of the Government, he may be held bound to know, tho' the presumption is so far that of the fact in this particular, that both Law and Equity allow an apology sometimes to be urged for not having made them a acquaintance. How then in this case there was no violation of any written, or published Law, so far as I can perceive. The whole case seems to have been known to him so far as it was accessible to any one. The Law of 1824 and the Ordinance of 1828, he was bound to know: but there was a fact, the authority of the Political Chief, to grant this land which he had no earthly means of knowing, except from the source to which it would be properly communicated, if it existed. He relies upon the information, takes his grant and proceeds as the Ordinance directs him, to the possession of the Land. He hears no more about the matter of the Sellaral Seigniors. The Government that granted it to him never protested him. Nor do I think the real owners have done so. She was fully advised of this mistake of her officer, if it was one. I suppose within six months after it occurred, as there is a requirement for a special report of the matter within three months, after it transpired. The knowledge of the fact we may suppose, was at any rate communicated by the Departmental Junta of California in 1840. I cannot think that in good conscience, the Government of Mexico, would after so many years, have driven him from his home for the want of the previous approbation of the Federal Executive. I feel authorized in the language of the rule laid down by the Supreme Court of the United States, in the case above cited, in this opinion, to consider that the conscience of the former Government, ought to be so affected by this conduct of herself and her officers as to hold the land (if she held it at all) as a trustee for the claimant. This rule by which the Supreme Court touches the conscience of the King was established under Laws which furnished rather a dimmer light by which to hunt for it, than is

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is given to us, by the act of the 3^d of March 1851.

The Old and familiar Camp, of the Principles of Equity is not held out, as it were to one side, for us to see by, but is put into our hands to guide and to govern us in the decision of those cases—

Having thus disposed of the littoral League question and come to the conclusion, that a Confirmation ought not to be refused, on that ground. I will pursue my inquiry into other matters affecting the validity of this claim. If all the objections that have been introduced, be insufficient to prevent such confirmation, yet, if according to the publicly promulgated law and Ordinance, prescribing the plan and scheme of disposing of the public domain of the Republic of Mexico, no right or title of any kind, ever vested in the claimant, then there is no ground for the application, of any equitable considerations, such as the Supreme Court of the United States have applied, to the cases of imperfect titles, under the former laws of Congress which have been referred to; No any ground upon which this Board, upon any of the principles or grounds of decision enumerated in the 11th Section of the act of the 3^d of March 1851, confirm this claim. The Law Agent of the United States contends, that such is the construction of this claim, when brought to that test. This makes it proper, and necessary, to proceed to the application of the claim, to the Ordinance of Nov. 1828. The Argument is, that by the just construction of the Ordinance, there was necessary to the existence of any right, or title whatever, in the petitioner, a previous Consent of the Territorial Deputation; and that as there is no evidence introduced in the case of any such previous Consent, that there is no ground upon which the claim can be confirmed. The same process of reasoning may be pursued in the consideration of this question, as was adopted in regard to the construction of the Decree of 1824, as to the requirement of the previous approbation of the Federal Executive, to the Colonization of the Lands within the littoral leagues. That is we should endeavor first to arrive at the meaning of the Ordinance by the provisions themselves, which it contains & if they are doubtful, then we may recur to the usage and practice, which was adopted and pursued

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by all the Officers of the Government, who were charged with the Execution of the Ordinance. In such a case it is the well settled Maxim, of the Spanish Law "Optima legum interpretatio est Consecutio". And to this may be added, as of great force in the construction that the Government whose Ordinance it was, was fully enforced, that such was the construction & practice of her Officers in its execution: and that no objection was made, or correction ever attempted of the supposed error. The proof in this case is abundant, that the universal course of practice, by all the Political Chiefs who ever granted lands in local forms to execute complete grants or titles to the petitioner & to deliver them to the party, before the submission to the Territorial Deputations or Departmental Juntas for their approval; and if there are any exceptions to this rule, they are so rare as that they only serve to prove the general rule. It is also as fully proved in this case, that the Government was well informed of this course of practice, by all her Officers or Political Chiefs. My own impression is, that this practice, was in conformity with the provisions of the Ordinance in this respect. But there can not be any doubt I think, that whether the Ordinance contemplated the execution of the full title, by the Political Chief or not, before he was required to obtain that approbation, or rather submit it to them for their consentments, there was to be in existence a royal or title, tho' an imperfect one, before the submission of the matter to these bodies; which last would be the consequence to authorize a confirmation according to the Act of 3rd of March 1831, if it were valid according to the tests applied to it by that Law. In considering this question of the approval of the Territorial Deputation or Departmental Junta it must always be borne in mind, that the whole undivided power, and authority to make grants, was vested by the Ordinance in the Political Chiefs. There is no participation with him in that exercise of power in any body else. The Political Chiefs of the Territories are authorized to grant &c. all the prerequisites to the exercise of that function by him are enumerated in the 3rd Article of the Ordinance. Immediately after the presentation of the petition, as required in the 2nd Article He shall proceed directly, to obtain the necessary

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information, whether there is in the petition the requisites demanded by the Law of the 18th of August 1824, both as respects the petitioner, and the land which he solicits, and for that he may rely upon his own judgment, and act upon it alone, or if he prefer to do so, he may consult at the same time with the respective Municipal Authorities, as to whether there be any objection to the grant. That in view of the whole, the Political Chief will accede or not, to the prayer of the petition, conforming his conduct exactly, to the laws applicable to the matter and especially to the above named of the 18th August 1824. Then follows the Section, which most particularly refers to the point under consideration. It reads thus "The Grants made to private individuals, or to Families, shall not be held as definitive by binding (or sales) without the previous consent of the Federal Deputation, to which, there shall be referred to it, the respective Expedientes. As we have seen that, no share of the function of granting, is devolved by the Ordinance upon the Deputation, their consent must necessarily be to what has been done in that particular. That he should have done something, in the contemplation of this Section towards a grant, must necessarily be conceded, even tho' it should not have amounted, to the execution of the perfect title. That he should have acceded to the petition, which was for a part of the land sought, is expressly required, and that there was at least a concession to that extent is a necessary deduction. To limit the word concession, to that point in his Act, would result in the same end for there would then be an inceptive title, whose effect would only be qualified, but not defeated by their refusal; and that qualification was only to detain it, in the condition it then was, until the final Act, of the Federal Executive. To say that what the Political Chief had done, should not be definitively valid, without the approbation of the Deputation, is the admission of a validity, tho' it may be short of irrevocability; and in that construction, there would be an imperfect right or title which if never destroyed under the former Government, might now in all other respects unexceptionable, be the subject of confirmation by this Board

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But my impression is, that after the necessary qual-
ities were ascertained by the granting Power, to exist
in the Land sought, and the petitioner, that he
might under the Ordinance proceed to the mak-
ing, signing and delivery of the title. The 8th Article
proceeds "The concession which is asked for, being
definitively made, there shall be executed a docu-
ment, signed by the Potlitical Chief, which shall
serve as a title to the party interested expressing in it
that it shall be understood, to be in conformity
with the provisions of the Law, in virtue of which
he may proceed to the possession. This definitive
act of the Potlitical Chief in consummation of
the title, refers to initiatory steps which by the
preceding or 3rd Article, he had been required to
take, in the same matter, and does not, as I think,
by any fair construction refer to any thing else. That
concession which is the only document, he is ever sup-
posed or required to make, was the same, which
was not to be held definitively valid, without the
previous consent of the Territorial Deputation. All
the force must be given to the provision requiring
the previous consent of the Deputation, which the
Ordinance imparts to it. If new to that consent,
there was no right or title conferred by the potl-
tical Chief, had all assurances, would be merely
a ministerial duty; The whole purpose of the
Ordinance would be reversed, and the granting
power would in effect, devolve on the Territorial
Deputation. But by the construction of the Ordinance
of the Ordinance, which it seems has always been
adopted, the effect of the consent was to place
the concession or grant beyond the supervision of the
Federal Executive, and its refusal to consent, was
not to annul the grant but to cause its submiss-
ion, to the action of the Federal Executive, which
might reserve, or not, in its annihilation. The con-
sent of the Deputation, did not alter the nature
and character of the grant, nor could their refu-
sal destroy it. It remained as the granting power
had made it. Now my object ^{which} it seems to me,
was intended to be accomplished, by the submiss-
ion of the matter, to the Deputation, has been ac-
complished, by the course pursued by the Potlitical
Chief in this case. He has made the definitive

title, expiring in its body, that it is made subject to the Act of the Territorial Deputation as prescribed by the Ordinance. The only question here is, whether in the face of the Political Chief to obtain the consent of the Deputation, is now to be held as destruction of the force and effect of a perfect grant, made subject to it. That this grant prior to the submission of the matter to the Deputation was a perfect and complete grant of the fee, there is no doubt. It conforms exactly with the mode of a complete grant under the Spanish Law, as furnished by the Supreme Court of the United States in the case of *Minoras heirs vs Mazy Repatee* in 8th Howard 314. The insertion of conditions is common to them both, It often occurs that conditions subsequent are imposed by the terms of the contract between the parties; but they are entirely consistent, with a full investment of the grantee of the entire estate in fee. In one sense of the word, those conveyances, are not defectively valued, that is, they carry upon their face, and bear about them the means by ~~which~~ ^{which} they may be destroyed. That an Estate in fee simple may be granted on conditions see Greenleaf's Evidence, vol 59. And further a condition in deed may be annexed to any species of estate and interest in Real property: to an Estate in fee, in life, for life, or years in any lands or tenements &c. Title B. Estates on Com. Chap 13 page 2.

This right of the claimant must be tested by the Grant as it is. I do not think it was made by the Political Chief prematurely in Order of time Whether made prematurely or not, is a question of the construction of the Ordinance; and I think that the construction which has been put upon it, is right, and further more, if it be not right the consequences must be borne by the Grantor, the Government and not by the grantee. The grant is not void, but must stand as it is, although in contemplation of the Ordinance, the full and complete title, was not intended to be made until after the Act of the Territorial Deputation. More especially should it be so held, after the long usage of that mode of granting under the Ordinance, with the knowledge of the Federal Government, as we are bound to presume, from

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The evidence on the record in this case. The fact of the authority, and the sole authority of making grants being vested in the Potlitical Chiefs, once established, no grant executed by him can be held void, for irregularity in the manner of executing that trust, tho it may result, in making the consent of the Territorial Deputation, a quasi condition subsequent instead of a condition precedent to the grant. There was an authority in the Grants to grant, and to grant the very lands or in other words, the Lands were granted, and he fully authorized to grant them, but he has misapprehended honestly (if at all) the course to be pursued in carrying out his conceded power, on the point, what then he could not proceed to make the grant, after ascertaining the matters entitling the petitioner to it, and then submit it to the deputation; or, submit it first to the deputation, and then execute the grant.

The Potlitical Chief has not usurped any authority conferred on the Deputation, by his course. He expressly subjects his action, to their approbation - It is a case at most, of irregularity, in carrying out an Ordinance prescribing his duty; and a grant thus made ought not to be avoided, for a departure from its directory injunctions, even in case, where the consequences resulting from the departure, would be much more serious and important, than the total neglect, under the decree of 1824 to have submitted his action, to the review of the Territorial Deputation. The Supreme Court of the United States in 5th Wheat. 339 lay down a rule which I think applicable to this case. They say that as to irregularities committed by Officers of the Government, prior to the grant, they do not doubt, but that the Government, and not the individuals must bear the consequences - and in 11th Wheat. 380 They say it would be extremely unreasonable to avoid a grant for irregularities in the conduct of those who are appointed by the Government, to supersede the the proper course of a title, from its commencement to its consummation in a patent; My Opinion is, that this is a perfect title, subject only to effect declared in the Ordinance, as consequent upon the failure of the Potlitical Chief to obtain the consent of the Territorial Deputation, and to the conditions which are lawfully annexed to the grant; The grant

being definitively made, and delivered to the claimant, as the Decree contemplated it should be, he has nothing to do further, than to perform those conditions lawfully attached to his grant, and which were to be performed by him. If the grant was not annulled by some act to be had upon it, according to the Ordinance, by others, than himself, it remains as it was when delivered to him, a perfect and complete title. No such act could take place during the existence of the former Government. The consequence of the failure of the Governor to obtain the approbation or assent, of the Deputation, we have seen did not annul the grant, but was only to be followed by a reference of the matter to the Federal Executive. No such reference was ever made, nor indeed was there ever any formal act upon it, by the Deputation. There was no time limited for their action, and we have no doubt, that they would finally have approved of it, as the only objection made, to the adoption of a Report by their Committee of entire approval, was an incident error in the form of that Report. I can see no reason why the Territorial Deputation should not have approved of the Claimant's grant. I believe it is substantially approved, and as its neglect was no fault of the Claimant's I do not think we ought in equity and good conscience, to refuse him a confirmation of his title.

Having considered thus far, the grounds of objection or objections which present themselves to a confirmation of this title, and not having seen any fatal defects, we will proceed to examine if any objections, affecting its validity, can be predicated of the non performance of any of the conditions attached to it. I will remark here, that as to several of these conditions, I do not find any authority for their imposition, in the Decree of 1804, nor in the Ordinance of 1828. But as the Potestade Chief is required in the Ordinance to conform to the Laws regulating the matter, as well as to the Decree of the 18th of August 1804 and the Ordinance of 1828, I am not prepared to say, that they are imposed without authority. The presumption is, that he does conform to the Laws; the conditions not to obstruct the highways crossings and rights of way and to build a

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a house and live in it within a year, and to put in the limits of the Sunc, besides the land marks, some fruit trees or forest trees, of some utility seem to have been taken, from the Regulations of Don Felipe De Neve, dated in June 1779 and approved by his Catholic Majesty in a Royal Order of the 24th of October 1781. In the 9th Section of those Regulations, we find it provided that the New Colonists shall be free and exempt from paying tithes or any other tax, on the fruits and produce of the lands and cattle given to them, provided that within a year from the day, on which the house lots, and parcels of lands be designated to them, they build a house in the best way they can and live there in; open the necessary trenches for watering their lands placing at their boundaries instead of Sunc marks, some fruit trees or wild ones of some utility, at the rate of ten to each Sunc. app. No. 3 of Capt. Halleck's Report. Sen. Doc. No. 17 page 136. If this was the Law by authority of which, these Conditions were inserted, in this grant, however suited to urban grants, they seem to me to be out of place in the large rural grant to this claimant; and instead of the comparatively mild penalty of paying tithes and taxes if he failed, the most disproportionate penalty of losing his whole land, is affixed in this grant, which however we may safely conclude would never have been enforced by his Government. Without questioning any further, the power of the Intendant Chief to insert the conditions which he has, put in the grant, I will proceed to the more important Considerations of the questions which arise out of this feature of the case. The conditions annexed to the grant are numbered to the extent of five. Tho the last so numbered, is not in fact a condition, but a claim of forfeiture declaring "Should he (the grantee) violate these conditions he shall lose his right to the Sunc and it may be denounced by another". I have no doubt that the conditions in this grant, under any interpretation which the Ordinance of 1828 or the Decree of 1834 can bear, are all subsequent conditions; for it can not be supposed that the execution and delivery of the definitive title spoken of in the 8th Article of the Ordinance was to be longer delayed than the

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Consent of the deputation, and besides the conditions are of matters in their nature subsequent to that time. It will be observed that some of the conditions are negative in their nature character and some active or positive, and one of them at least a mere recital or descriptive allegation of what was already done, which is not strictly a condition, as that must necessarily relate to the future. Of those which are affirmative and active, some are to be performed by the grantee himself, and others by an Officer of the Government, as his instances. With regard to any failure, or imperfection in the performance of any of them, which the grantee is not required to perform, he ought not, whatever else he may suffer from that failure or imperfection, to be subject, on account thereof to the forfeiture prescribed in the penal clause. It could only be by the reversal of the ancient rule applicable to the construction of penal clauses, that he could be visited with the defaults of a public Officer whose action the Government had required him to solicit. The penal clause is "If he shall violate these conditions he shall lose his right ~~of~~ ^{of} ~~the~~ ^{the} land, he will not be held to the penalty for the violation of conditions which he was not required to perform, and the execution of which he could not control. So as far as there appears to be any violation of the conditions which the grantee was to perform, I have no doubt that the failure is of a nature and character, which ought not to be visited, with the penalty of the loss of his title. The only neglect or violation of a matter material to the grant, relates to the time of building the house and living in it, the actual occupation, the judicial possession and measurement, the building of the house and his residence in it, all took place many years before the acquisition of the country by the United States, and to inflict the penalty now for the defiance of time between their requirement and actual performance, would seem to me, to be entirely too disproportionate and vindictive, to be sanctioned by the Laws of Mexico or by the principles of Equity. The imperfect manner of executing, or the failure from the Laws & Ordinances regulating the discharge of the duty of measuring this land

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which by the condition of the grant, he was required
 to procure to be performed, is according to my view
 of the penal clause, no ground for inflicting its
 force upon the grantee, and will not be considered
 by me, except in connection with another objection,
 which is that, to the validity of the claim, for
 want of a sufficient segregation of the land from the
 remainder of the vacant lands of Mexico. This view of
 the question, as to the effect of the conditions in this grant
 upon its validity, taken in connection with the proof in
 the record might suffice perhaps upon this branch
 of the case; but there are other views, which I feel called
 upon to take of this matter of the sealed grant conditions
 in the grant. This grant in its construction, as to its
 character, and as to the effect of the breach of the con-
 ditions, annexed to it, is to be tested by the law of
 Mexico. We have already seen, that it was in its form
 and structure, a complete conveyance of the simple
 title. We are now to consider what is the effect
 under the Mexican Law, upon the rights of the party
 of a breach of the conditions which are annexed to it.
 The entire fee being vested in the grantee, the first
 question which arises is, whether upon a failure or
 breach of an annexed condition, that vested title
 was thereupon, *ipso facto* divested out of the
 grantee and re-vested in the Government, without
 anything done on the part of the Government to man-
 ipose her will, to take advantage of the forfeiture.
 This is a very important consideration, for if the land
 in this grant, did not vest in the former Government
 but required some act or proceeding some bond
 to produce the result, which proceeding was never
 had, under the former Government, the United States
 did not acquire the land under the Treaty of
 Guadalupe Hidalgo, but at most a mere naked
 right, to enforce a forfeiture, which belonged to
 the former Government. The distinction must never
 be lost sight of, in considering this question, between
 conditions which were to be performed, before a per-
 fect right by a grant of the fee, was to be vested in
 the party, being what we term in our Law, Conditions
 precedent, which not being performed would leave
 the fee in the former Government, and thus under the
 Treaty would devolve upon the United States—
 to be dealt with, as she might direct; and those

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conditions which according to our nomenclature are
 called ^{conditions} *subsequents*, which attach to a complete grant
 of the fee; and have such effect if resolute as the
 Law of Mexico prescribes. I will advert for a moment
 to the view of this subject, as it is required in those
 Governments with whose principles we are more
 familiar than we are with those of Mexico and by
 which the Government of the United States, both in
 its Legislature and Executive Departments has al-
 ways manifested a strong inclination to be governed
 when adjusting questions of private right between
 herself and her own citizens. This rule in this coun-
 try upon the subject, is laid down with so much
 brevity and yet with such comprehensiveness, in
 a note to the text of Cruise on Real property as cited
 Mr Greenleaf, that I will quote it at large. "A condi-
 tion is something inserted for the benefit of the gran-
 tee, giving him the power on default of perform-
 ance, to destroy the estate if he will, and re-vest it
 in himself or his heirs. As the Law does not presume
 forfeiture, it requires some express act of the grantor
 as evidence of the intention, to reclaim the estate viz
 an Entry". 1 Greenleaf's Evid. page 44. Tit 8. The doctrine
 of the English Common Law on this subject, except
 where varied by special Legislation, is adopted
 generally in this Country. That doctrine even in
 Grants by the Crown of England, is thus laid
 down by Cruise, lib 40. "In all cases where the Crown
 is entitled to Land upon the breach of a condition
 an Office Counterwails an Entry", citing Flouca. 243.
 The People vs Brown 4th Leans 416. 426. In the State
 of Tennessee which had a large portion of public
 Lands for distribution, the doctrine with regard
 to grants by the State, is, that even a Grant which is
 void for fraud, must be adjudged so, by some process
 of Law before the State can reclaim it. 4th Leans. Peple
 U. S. 657. and that a grant by breach of conditions
 subsequent, is not void, but only voidable. U. S.
 Rep. Vol 1st 472. 1st Continn's Ten. Repts 370.
 I will now advert to the doctrines of the Civil Law
 upon that subject, which correspond in a remark-
 able degree with those of our Equity. I am of opin-
 ion, that the doctrines which are applicable in this
 particular, to private Grants or conveyances ought to
 be equally so to Public Grants; and that when brought

before a judicial tribunal, where the nature of the grant is the same, and more especially where its features are identical, the same rules of decision should apply. There are rules which are peculiar in their application, to grants by a Sovereign, which are not involved in the consideration of the force and effect of ^{these} "Conditions. Such for example, that on grants by a Sovereign, nothing should be taken by implication and that in their construction, they shall be taken most strongly for the Sovereign; whereas in private grants, the rule is, that they shall be taken most strongly against the grantor and in favor of the grantee.

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But where the question is not one as to the meaning and intent, but as to the effect of ambiguous stipulations, such as conditions, whose signification is apparent, the same rules should govern no matter who are the parties. The Supreme Court of the United States have held in an Opinion delivered by Judge Marshall, that the King of Spain was bound by the fundamental laws of his Kingdom. It is needless to remark that the Republic of Mexico is governed by the same Municipal laws, which prevailed before her independence, except so far, as they are inconsistent with her present form of Government, and have been changed by her own Decrees. In the Particulars I find the doctrine asserted without qualification, that the King is bound by the Laws of the Kingdom, although he made them, just as a Subject is bound by them 1st Part. Tit. 1st Law 14. So also in Novus Recop Vol 1st Tit. 2 Lib 3 it is declared, that the laws must be kept as well by the King as the people. Those doctrines of the Law to which I shall make reference ~~will~~ follow. "Clauses of Nullity and penal clauses are not always executed to the Rizer, and covenants are not dissolved nor penalties incurred in the very moment, which the condition bears, even although it should be agreed on, that the Contract should be void, by the bare deed, and without any ministerial act of Justice. But these sorts of clauses have their effect regulated by the discretion of the Judge according to the nature of the Covenant and the circumstances. 1st Stat. Romat page 185 art 220. If the condition depends either wholly or in part on the act of one of the Contractors, and he has not satisfied it within the time, it is understood that in the cases

where it would be equitable to grant delay, it ought to be granted according to the circumstances; as when the delay has occasioned no damage, or if there is any, where it may be repaired. *ib.* page 184 art 218. In all covenants in which one of the covenantors, is obliged to do, or give a thing, or to accomplish in any other manner, that which is agreed on; and especially in those in which the nonperformance is to be attended with a dissolution of the contract, or with some other penalty, it is equitable, and for the public interest, that the covenants be not immediately dissolved; nor the penalties incurred, for every sort of nonperformance indifferently, *ib.* 177 art 196. Although a covenant proves to be null, yet he who complains of it, can not restore himself to his own right, unless the other party consents to it. But he must have recourse to the Authority of Justice, whether it be to get the nullity declared by a sentence, and himself reinstated in his right, or get the sentence of the court put in execution, in case it should meet with opposition. *ib.* page 191 sect. 240. When a covenant is not dissolved by common consent, the party who complains, can not molest the other, but he ought to have recourse to Justice to get the covenant declared void, and the sentence of the Juries put in execution. *ib.* 196 art. 14. These extracts are very explicit, and they place the whole matter of the effect of conditions, and their breach, and of penal clauses & forfeitures upon grounds which recommend themselves to the Conscience, and Sense of justice of every One. And moreover are the foundations of our Equity System, on the same heads. It is laid down explicitly in *Novus Recop Book 3^o Tit. 5 law 1.* That what the King gives once granted to any one he cannot take away without *facult* (*Aut culpa*) The important question is how that *facult* is to be ascertained, and the Sovereign will to enforce it be manifested. I have no doubt, that in different branches of the Administration of Public Affairs. Some what different modes were adopted to enforce penalties and forfeitures. There were public denunciations known Offices, and there were secret denunciations, who like plaintiffs in our *que tam* actions were instruments of vindicating the violated laws and of enforcing the penalties attached to their

breach. The last part of the penal clause in this deed, alludes most distinctly to such process in case of breach of any of the conditions by the Claimant. It says in case "he violate the Conditions, he shall lose his right to the land, and it may be denounced by another". Now if may means must, which would be the case in a Decree of the same sort, there would be no difficulty in the case. But it is possible that this is a mere privilege to others, and is a cumulative proceeding; not exclusive of any on the part of the Government, or decisive of the question whether the title does not vest ipso facto upon the happening of a breach. An interesting case has lately been decided by the Supreme Court of Texas. Hancock vs McKinny Nov. Term 1851. That decision was upon a complete Mexican Title, or grant, like this with conditions annexed, but the terms in the clause of forfeiture, do not expressly refer to the process of denunciation by another; yet that mode of ascertaining the fact of breach of conditions is referred to in the decision as an established course of procedure. The case however is not conclusive of the question, whether it was or not, the only means by which the title of the grantee could be impeached, or whether any inquisition of any sort were necessary, to reinstate the title in the Government. The language of the Court upon that subject is. "It is certain that down to the period of the commencement of the Revolution it would have been competent for any person entitled to Land, to have denounced any land that he might wish to appropriate to himself; and if in the process of perfecting his title it should appear that the Land that he wished to appropriate, had been already granted or conceded, the enquiry would be made, if it had been forfeited for the non performance of conditions or from any other cause and whether the denouncer should have his title or not, depending upon the result of the enquiry, whether such forfeiture had occurred or not. I have remarked that this is not conclusive of the point, but from the general doctrines of the Mexican Law, to which I have adverted from the mention made of this mode of procedure in the penal clause of this grant, and from the fact

as disclosed in the Opinion of the Court in the case
 from Texas, that no grant would be made upon
 the mere allegation of forfeiture, but that it must
 be established by an inquiry, I am brought to the
 conclusion, that there was not in fact a reinvested
 of the fee simple of the ~~fee simple~~ title in the
 Mexican Government of the Land now claimed, at
 the time the United States acquired the country,
 and that this Government only acquired by the treaty
 of any thing, a mere right of the former Sovereign to
 enforce a forfeiture. There have been no cases brought
 before the Supreme Court of the United States under
 the former Treaties and acts of Congress, which furn-
 ish occasion or necessity for any Express Opinion
 upon the question I am now considering. In the case
 of the United States vs ~~Subola~~ in 10th Peters 321
 the Court use this Language: "It is unnecessary to
 decide whether by the acts which authorize the
 Courts of Mexico & Florida to decide on claims
 to Land therein, Congress intended to assert a right
 by forfeiture, for conditions broken to Land
 which have been once legally granted." And it may
 well be doubted whether it would have been re-
 annexed to the Royal Domain had the Province
 remained under the Dominion of the King of Spain;
 Nor is there any provision of any Law of Congress which
 specially requires the Court, to inquire into the per-
 formance of Conditions, on which grants were made.
 The case in which it has been held by the Supreme
 Court of the United States, that this Government
 could; or at least would, take advantage of for-
 feiture which have occurred under the former Gov-
 ernments were such as were considered by the Court
 to have been of that category, in which no title
 in fee had vested in the claimant and that by
 the stringent force of the Ordinances under which
 they passed, they were utterly void ab initio; and
 to be considered as never having been given at all;
 that the conditions were precedent, and their perform-
 ance expressly required, before the concessions would
 to have any effect. Of that class of cases are the
 United States vs Kingsly 12 Peters 476. United States
 vs Alligins 14 Peters 334 &c. In the absence of any express
 authority of the Supreme Court, I do not feel at
 liberty under the terms of the Act of 3rd March 1851

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to decide that we have no authority to declare a forfeiture of complete titles, by the non performance of conditions subsequent. In this case the result of that inquiry has been satisfactory to my mind, that the claim ought not to be rejected, for the want of any compliance with those conditions, under the Spanish Law, and more especially under the application of all the facts disclosed by the Recce, of the Principles of Equity.

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The only remaining question arising in the consideration of the Validity of the Claim in this case, is whether the Land granted, can be considered as having ever been, or is now capable of being severed from the public Domain, in virtue of what has been done in regard to it, by the authority of the Mexican Government. If any thing more is intenced by, or embraced in the requirement of a severance of the land granted, from the Mass of the public Domain, than the obvious requirement, which inheres in every grant or deed, from the very nature of things viz that there must be something granted, which can be distinguished from other things of the same sort, it must be derived from the positive laws and ordinances of the Government, where the grant is executed. The general doctrine of universal application is plainly stated by Judge Marshall in 5th Wheaton 359. 4 Cond. 683 in the following words. "It is essential to the validity of a grant, that the thing granted should be so described, as to be capable of being distinguished from other things of the same kind. But it is not necessary that the grant itself should contain such a description as without the aid of extrinsic testimony, to ascertain precisely what is conveyed. In applying this rule we should observe what is the intention of the grantor, as to the thing granted. Where the intention is to grant a specific thing, as a house or town lot, the house or lot must be described in the deed, so as to identify it, or by reference to some thing by which it can be done. But when the grant only intences to be of a certain number or quantity, of an understood, and defined nature of things, then that number or quantity is the matter to which the deed will specially apply; and that number or quantity must be so certain as to distinguish it from another number or quantity;

But all the certainty above that, is of the genus or species of the thing, of which, that certain number or quantity is predicated: And the further identification or specification of the thing, is to be determined in a mode to be agreed upon, or it may be established by means provided by Law. It may be by the selection ad libitum of the grantee, or grantor; or as is usual in grants of Land by a Sovereign, by the Public Officer called the Surveyor. And where the thing is to be selected, and specified by a public Officer, chosen by the Government for the grantee, to perform that office, his Omission or Fault does not vitiate the Grant. 5th Monroe's Repts. 159. This distinction is palpable, and cannot be better illustrated than by a case adjudicated on 1st Nov 24. There was a Concepcion upon a petition of the party, stating that he was ignorant of the public lands that were vacant, and desirous to avoid interference & disputes with any person, he further prayed his Excellency to grant them at places, where the Surveyor General might survey them as vacant land. There was a description of nothing, but the number 8000 acres of Land, and the Surveyor General ordered to survey for the grantee that amount of vacant land without injury to other persons. And this claim was confirmed by the Supreme Court of the United States Judge Catron in delivering the Opinion of the Opinion of the Court, as one of the grounds of objection taken on the part of the United States, to the Confirmation that, there is no description whatever in the said pretended grant, of the lands alleged to be granted & no valid survey could be made, so as to sever any lands from the public domain" He proceeds to answer the objection and says "Although there is no description of any place where the ^{land} granted shall be located, in the Governor's decree, still it was binding so far as it went. The Surveyor General was ordered to survey the lands solicited, in places vacant, and without injury to third persons. The acts of the ^{the} Subordinate Officer come in aid of the decree &c" This proceeding indeed needed no authority to establish, that a grant may be good, tho' not of any specific thing which is ascertained in the mind at the time of the granting: But the thing of which the quantity or number is predicated, is the object of

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the grantee to acquire and of the grantor to give. all else that is in the grant, is moonshine, but for that. Now this primary object, of getting the thing, into possession for use and enjoyment, is to be attained in cases of public grants, as I remarked above is usually through the instrumentality of officers of the Government. This appropriation of the specific thing, or separation of it, from the mass in which it is confounded is in every Government, a matter of public policy which relates to herself. The Government desires to know for her own interest and convenience, what is left to her after that granted quantity is taken out, and where it is, so that she may know what she has to give to others, and that others may know what to solicit. It is the duty or rather it is wise policy in every Government having lands to dispose of, to adopt such a mode of procedure of identification, of what she grants, as well best subserves her own, and the public convenience and interest. But it is a matter which concerns herself and her own citizens alone. She may regulate it according to her own views of policy, in which she is generally determined, by the means and conveniences she may be able to command; and is often influenced by the peculiar condition of the Country or province and their pursuits, whether Agricultural or pastoral of the inhabitants of it. Whatever plan or course she may adopt, is all sufficient to bind her and her citizens, and should also bind those who afterwards succeed to her rights and objections -

The Supreme Court of the United States have expressly recognize this view of the subject. In deciding upon cases where land is granted, or attempted to be granted specifically, and not a mere number of acres, or quantity of land to be identified there after, either by the party at his election, or by a public officer, they have laid down the rule upon this subject expressly with reference to the Laws and Ordinances of the country making the grant. They say where the grants even by a liberal construction contain no points by which the lands can be identified, the grants must for vagueness and uncertainty be held void. The Court have not been influenced in this conclusion by any of the common Law rules which make grants void for uncertainty; such for example

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if the King grant lands in a Grant without ascertaining what part, or the special name of the land, or how bounded, the grant is void for uncertainty; and yet if an individual so grant, it would be good. They have only applied the laws, and ordinances of the Government, under which those claims are denied; and required that the thing granted be so described as to be capable of being distinguished from other things of the same kind, or be capable of being ascertained by extraneous testimony 15th Petas 215. So in 11 Nov^r 1827 the Court say "These enclosures are in strict accordance with the numerous ^{decisions} of this Court, which insist on the necessity of the assurance of the property claimed, from the public domain, either by actual survey, or by some ascertainable limits, or mode of separation recognized by a competent Authority—

In view of these principles, we will examine for a moment, the plan or system of granting, adopted by the Mexican Republic, by the Ordinance of the 31st Nov. 1828 carrying out the general decree of the 18th of Aug^t. 1824 under which the grant in this case was made. This mode of disposing of the public domain, by the Government of Mexico, was unlike that, which had been pursued, by the Spanish Government in the provinces of Louisiana and Florida, and indeed unlike that, pursued in those countries, with whose practices in particular, we are most familiarly acquainted. In all those countries the general course has been, upon the petition being presented by the party, or application in some mode, made by any one desiring to obtain land, for the purpose of furnishing the necessary certainty of description, and of separating the land from that which is not granted, to direct a survey, to be made by sworn officers, or surveyors using the implements and apparatus, necessary to do the work upon the ground, and afterwards to plot it upon paper. This description of the land, being thus made by a survey, is transcribed into the grant. It consists of courses and distances, run by the surveyor, and of stakes or marked trees, or other natural objects, which ascertain the very land which was actually surveyed. But in California there was no such means provided by the Government for that purpose; and yet the public policy and interest of

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The Republic requires the advancement of settle-
 ment and cultivation, in this region of her vast am-
 -cion. The Government proceeded to do this, forging the
 Emancipation, which her more regular and usual
 course might have attained, in the matter of
 segregating the Land granted, from the reserves of
 the public domain. In this unprovided condition of
 the Country, she adopted the plan of granting, re-
 quiring the applicant to present to the Political
 Chief a petition, as appears in the 4th Article of the
 Ordinance of 1828, stating with particularity, all
 that relates to the person of the applicant, mark-
 ing likewise with the distinctness that may be
 (possible) and describing in a map (drawing) the
 land which he solicited. That Map or plan which
 was a rude sketch, made with no scale of distan-
 ces, with no reference to, or at least with no accu-
 racy as to course, was generally drawn as it would
 seem, by the finger or some blunt instrument, and
 the lines colored with the pieces of berries or char-
 coal, or some other coloring substance. It contained
 always notable natural objects, with which the
 Country abounds, and generally if not invariably
 gave a name to the place or tract solicited,
 which if not then notorious, soon became so &
 generally retains it still; stating the supposed
 quantity in leagues, within the natural monum-
 ents, of rivers, hills, the sea, the shore or some
 remarkable ravine or promontory, of that coast
 range of mountains. That description went into
 the grant, instead of a survey and designated the
locus in geo. the granted leagues were to be con-
 -tained. Sometimes the grant was by those miles
 and bounds, and sometimes of a number of leagues
 within them. After the grant was made, the
 party in the language of the Ordinance, was to
 proceed to the possession, and to a measurement
 of the land, according to the Ordinance, which
 measurement was of the nature, and kind exhi-
 -bited in the Record of this case. Such was
 is the mode of segregation, in this case, as pro-
 -vided for and though acknowledged and recognized
 by the Government of Mexico in California. As to
 any survey in the legal sense of that word as
 understood and practiced in the Provinces of Louisiana

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and Florida and generally else where, under the
 Superintendance of a Surveyor General, such a
 thing was not contemplated nor expected. To
 have required it would have been like the Egyp-
 tian extraction of the Captives Jews, to make bricks
 without straw. There never was, that we can
 hear of, an Officer holding the place of a Surveyor
 in Louisiana under its former Governments. The
 neighboring Justice of the Peace, or Alcalde, who
 was required to officiate in that capacity, was
 not qualified to do more than to put the party
 upon the Land, and make an attempt to measure
 it, which with no compass but the Sun, and
 with a lasso for a chain, was of course very far
 short of the accuracy of the same process conducted
 according to Galvan or to Gentry. It was all however that
 the Government had provided means for, and was
 all that she required or expected. It was conduc-
 ted with the observance of due form and ceremony
 and in one of its acts, is almost identical with the
livery of seisin of our Saxon Ancestors. The grantee
 was required to pluck turf or break twigs from
 the trees or shrubbery on the ground or pick up rocks
 and in token of his full Ownership, to throw them
 to the four winds. The proceedings on the ground,
 were all reduced to writing, and deposited by the
 Magistrate in the Archives, where they are now found
 with as much care, and fidelity, as a Navigator
 would render up the chart of his voyage of discov-
 ery, to the Board of Admiralty, or to the Secretary
 of the Navy. Now was all this a mere idle mockery.
 The result of this mode of judicial possession &
 measurement resorted to from necessity, as it would
 seem, has been to identify the spot; and lead
 us to it with almost unerring certainty. In this
 case the lines were pursued on three sides of the
 tract, the record stating with particularity the
 the progress of the measurement. It does not app-
 ear that they did more, but close the operation by
Vesta Ojos or a survey with the eyes. A deposition
 of a witness referred to in the case of Boscawen in
 111 House. who was a regular practical Surveyor
 states that in all his Experience, he had never met
 with a Spanish Survey, which enclosed any side
 of the tract. Even the Surveyor General of Louisiana

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seemed to think, that the purpose of the Government was accomplished by that, and doable it was a sufficient indemnification. I do not think if there are any such monuments in existence as the grant calls for that any Surveyor could miss his his way to the place. The Government of Mexico I feel some assurance, would never have turned the claimant out of doors, from off the land where her officers had put him, on the pretense that the land could not be ascertained. She could not in good faith, have done so and I think this Government ought not to deal more reproachfully with him, than that. Her policy was satisfied by what was done in regard to the separation of the land granted from the residue of her vacant lands, and I entertain no doubt, that in making the Survey of this Country according to the perfect system, which the ^{Government of the} United States has adopted that there will be any insurmountable difficulty in locating the claim of Cruz Leuantes. Guided by the Map or deseno referred to in the grant, and forming part of the monuments of title; by the possession, which has continued from the day at least on which he was formally installed in it, to the present time, within the monuments described in the grant, a Surveyor can now without difficulty, find not only where the land lies, but by the use of the recorded measurement of his last accomplished predecessor, he may find the beginning, and at any rate he will be furnished with abundant means to make one. In conclusion I think from a full view of the whole case, that the claim of Leuantes is valid.

Sept. 3rd 1852

Nancy J Thornton
Claim. &c

Filed in Office Augst. 3rd 1852

Geo. Fisher

Secy

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Opinion of
Com. Hiland
Hall.

Claim of Cruz Cervantes No. 56

Opinion delivered by Commissioner Hall on making the
decrees of Final Confirmation.

When the Opinion of the Board on the principal legal points
involved in the claimants title, was delivered by my
colleague on the 3rd of August last, the entry of a final
decree of confirmation was suspended. At that time
it was a matter of doubt, in which District of Califor-
nia, the Land was situated, rendering it uncertain
what District Attorney under the 8th Section of the
act of March 3. 1851, our decision with the reasons for
it, should be certified. There was also then pending
before Congress a bill, proposing a change of the Law
in that respect and requiring our decisions to be certifi-
ed to the Attorney General in lieu of the District Attorney
which we had strong reasons to believe either had been
or would be passed before the close of the Session then
about to be terminated. In this state of uncertainty in
regard to the proper Officer to whom our decisions
should be reported, final confirmations were also
suspended in those other cases, in which Opinions
were given, previous to the 16th of August, at which
time our labors at this place ceased, in consequence
of an Order from the President for us to hold a Session
of the Board on that day at Los Angeles. This uncer-
tainty in regard to the actual state of the Law appli-
cable to certificates of our decision continued until
the receipt of the new act of Congress on the subject
towards the middle of October; since which time
it is well known to have been impracticable for
the Board to take up the subject, until our organ-
ization again at this place on Monday of the present
week. There was also in August last a difference
of Opinion between my two Associates in regard to
the propriety of making final decrees of confirma-
tion without previous surveys of the Land, which
question I was unwilling at that time unnecessarily
to pass upon. It is now however, proper to dispose
of it. and as the question is one of importance, I shall
state as briefly as I can the views I am inclined to
take of it. By the instructions of the Commissioners
of the General Land Office to this Board dated Sept
11. 1851 approved by the Secretary of the Interior, it appears
to have been contemplated that preliminary surveys
should be required by the Board, of all tracts claimed

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in advance of any Confirmation of title. Those instructions hold the following language on this subject:
 "You will require the Claimant in all cases, to file a duly authenticated plat of Survey, exhibiting the tract claimed, and showing & showing the nature and extent of any claim interfering therewith.

This is deemed indispensable, in order by such initial survey, to pre-define with precision and certainly the limits of any title claimed, thereby avoiding in regard to location all doubt, or uncertainty, controversy hereafter in case of confirmation, and furnishing at the same time, to the Commission and to the Courts, evidence of the existence and nature of conflicting claims. These instructions as they are termed, must in their nature be considered as advisory merely. The Board of Commissioners as constituted by the Act of March 3rd 1851 in judging upon the validity of claims exercises an Authority wholly independent of the General Land Office and of the Department of the Interior. The Act does not specify the particular evidence which the Commissioners shall require to establish the validity of a claim, or authorize any other department or branch of the government to do so. What extent the amount and character of the evidence shall be to justify a confirmation, is consequently within the exclusive province of the Commissioners to determine.

By the Law however constituting the Commission patents for the land confirmed by the Board are to be issued, from the General Land Office. Such has heretofore been the case in regard to private claims confirmed by former Commissioners and by Congress. And it appears to have been usual for the Office to issue instructions, to Boards of Commissioners heretofore constituted. As the views of the head of that Office, in regard to the effect of confirming titles without definite or uncertain limits, without previous survey, must be supposed to be the result of a particular acquaintance with the subject acquired by long experience, I cannot but feel that they are entitled to a respectful consideration. I do not regard them as Authority, but in the nature of information and argument that should not be lightly disregarded. The leading object in requiring a preliminary survey in advance of Confirmation, as

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stated by the Commissioner of the Land Office, is to "fix with precision the limits of every tract claimed; there by avoiding in regard to location, all doubts or controversies thereupon and to furnish to the Commission and the Courts evidence of the Existence Mutual of conflicting Claims". I understand it to be the Opinion of my Associate, that the Act of Congress constituting the Commission, has been misconstructed by the Land Office; that the authority conferred on the Board to decide on the Validity of Claims does not embrace any matters connected with their location; that it is the duty of the Board in confirming a claim, to do it without a particular description of the Land, but by reference to the description contained in the title papers, leaving it to the Surveyor General to find the Land and to locate it. And that within this locating process of the Surveyor General is embraced that of deciding upon all interfering or conflicting claims to Land, in exclusion of the jurisdiction of this Board to notice or consider them. If this be a correct view of the Law, a Surveyor's preliminary to a Confirmation would doubtless in most cases and probably in all be a mere negative Act. For if after the limits of a tract of Land and the limits of any claim interfering therewith had been ascertained and pointed out by an initial survey, it would be beyond the authority of this Commission to confirm the claim according to such limits, or to determine to which claimant the disputed Land should be confirmed, such survey would indeed seem to be wholly useless.

I have not been able to satisfy myself that the jurisdiction of this Board is thus restricted.

By the 13th Section of the Act of March 3rd 1851, authority is undoubtedly conferred on the Surveyor General of California to decide temporarily upon the lines that shall be run as the boundary between conflicting or interfering confirmed claims, but I do not think it necessarily follows that the Board are to disregard conflicts which come to their notice before confirmation, for the purpose of bringing them within the jurisdiction of the Surveyor General. On the contrary I think the power in the 13th Section was conferred on the Surveyor General, because it was foreseen that not withstanding every precaution which might be taken by the Board, questions in regard to conflicting bound

claims might and probably would arise after confirmation, for the determination of which, some process in law necessary to be made -

By the 13th Section of the Act aforesaid, it commands the duty of the Surveyor General "to cause all private claims, which shall be finally confirmed to be accurately surveyed", and it is then provided that "in the location of such (confirmed) claims", the Surveyor General is to have the same power as is conferred on the Register of the Land Office and Receiver of Public Moneys of Louisiana, by the 6th Section of the Act to create the Office of Surveyor of the Public Lands of Louisiana" of the 3rd of March 1831

In regard to this Act of March 3rd, 1831 it is to be observed, that previous to its passage several Boards of Commissioners had been constituted to act upon private Land Claims in Louisiana, who had confirmed many claims, and on whose reports numerous others had been confirmed by Congress. The 6th Section of this Act thus referred to, in the Act of March 3rd 1831, has no relation to claims in the condition they had been or might be when presented to Commissioners, but only to such as had been already acted upon. The Language of the Section is as follows "That in relation to all such confirmed claims as may conflict or in any manner interfere with each other, the Register of the Land Office and Receiver of Public Moneys for the proper Land district are hereby authorized to decide between the parties and shall in their decision be governed by such conventional lines or boundaries as have been or may be agreed upon between the parties interested either verbally or in writing; and in case no lines or boundaries be agreed upon between the parties interested then the Register and Receiver are hereby authorized to decide between the parties, in such manner as may be consistent with the principles of Justice"

The Section then proceeds that the claims shall be surveyed in accordance with the decision of the Register and Receiver and that their decision and the patents issued in conformity thereto, shall not preclude a legal investigation & decision of the controversy between the claimants -

I do not suppose that it was understood by the framers of the Act of March 3rd 1831 that the Commis-

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cases and Congress, in the claims that had already
 been confirmed, had designedly confirmed claims with
 with conflicting boundaries, nor that the framers of
 the act of March 3rd 1851 in providing a like remedy
 for conflicts between claims after they should be con-
 firmed by this Board, had it in contemplation
 that the Board would have confirmed claims with
 known conflicts, for the one purpose of having them
 afterwards determined by the Surveyor General. On the
 contrary I regard the authority conferred on the Survey
 or General, as it appears to have been understood by
 the Commissioners of the Land Office, and as was
 evidently that conferred on the Register and Receiver
 under the act of 1831, as furnishing a remedy for such
 conflicts only, as had not been previously noticed
 and consequently could not have been avoided
 By the 8th section of the act of March 3rd 1851 under
 which this Commission is constituted. "each and
 every person claiming lands in California by virtue
 of any right or title derived from the Spanish or
 Mexican Government" is required to present the same
 to the Board of Commissioners, and the Com^s on the
 evidence produced before them are to decide on the
 validity of the claim. I think the extent of the tract
 claimed and the place where it is to be located may be
 involved and may be important to be considered
 by the Commissioners in determining the validity of the
 claim. If the land is to be located on a tract which
 had been previously granted to another party I do not
 perceive how we could declare the claim to be valid
 so I think the title of a party to a tract of lands cla-
 imed to have been granted him, may be valid in part
 and invalid for the residue. If two grants entitle by
 lapping on to each other, both cannot be valid for
 the whole, and in order to determine the extent to which
 each is valid the Commissioners concerned must ne-
 cessarily, by means of a preliminary survey or other
 satisfactory evidence, determine the location and
 extent of each. In each case the Surveyor, in our cer-
 tificate of confirmation, could not be required ex-
 clusively to the description in the title papers for his
 direction in making his survey, but the Commissioners
 must necessarily describe the boundaries as they should
 find them to be by evidence and thus determine the
 locality of the land. The limits and boundaries of a

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tract as well as its quantity may be materially affected
 by the construction to be given to the title papers, which
 construction I think must be made by the Commission.
 The validity of a claim therefore, as it appears to me
 very much depends on the location which is to be given
 the Land claimed. Its location is consequently ^{a matter} to be con-
 sidered and passed upon by the Commission.
 An argument against the authority of this Board to
 enquire into the location of a tract of land claimed
 under Spanish and Mexican grants, has sought to
 be drawn from the language of the second section of
 the act of May 26, 1824. Empowering Authority on the
 District Court to determine certain land titles. It is said
 that the act expressly gives the local Authority to determine
 the location and boundaries of the land claimed &
 that the Act constituting this Commission, not having
 used similar language, it is to be inferred that the
 Authority was not intended to be conferred on the
 Commission. It is true that in the act referred to,
 in the enumeration of what matters may be determined
 by the Courts, the location and boundaries of the claim
 are, among others, mentioned, but this language
 is immediately followed by a direction to the
 Court "by a final decree to settle and determine
 the validity of the title, using the term 'validity
 of title, to comprehend all the matters which have
 been previously mentioned as coming within the
 authority of the Court. If this be not the construction
 of the language, it would follow that the final
 decree of the Court would leave undetermined the
 very location and boundaries, which it had just
 been directed to pass upon. I think the term
 validity of title thus used in the act of 1824 was
 intended to embrace the location and boundaries
 of the land and all other matters proper to be con-
 sidered in passing upon the title, and that the
 words validity of the claim used in the 8th article
 section of the act of March 3^d 1851 have the same
 signification, and consequently the powers of this
 Commission and of the District Court under the
 act of 1824 are, in that respect, the same. I do not
 therefore find any want of authority in this Board
 to act upon and determine the boundaries of
 land for which a confirmation of title is one of
 its duties.

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the very locality and boundaries which it had just
 been directed to pass upon. I think the limited validity
of title thus used in the act of 1824 was intend-
 ed to embrace the location and boundaries of the
 land and all other matters proper to be considered
 in passing upon the title, and that the words
validity of the claim, used in the 8th section of
 the Act of March 3^d 1851 have the same signifi-
 cation, and consequently the powers of this Comm-
 ission and the District Court under the act of 1824
 are, in that respect the same. I do not therefore
 find any want of authority in this Board to act
 upon and determine the boundaries of the land
 for which a Confirmation of Title is one of evidence.
 The question however, whether the Commissioners shall
 require a survey to be made of a tract of land
 claimed, in advance of Confirmation of the title
 is one of evidence. The Board has no direct author-
 ity to compel a survey to be made but it may
 decline to confirm a claim in the absence and
 for want of such evidence of the extent, locality
 and boundaries, of the tract claimed. Whether
 the Board should do this in all cases, in confor-
 mity to the views of the Land Office I confess
 I have entertained considerable doubts. I believe
 with the heads of that office that much future
 controversy and litigation, would be prevented, and that other advantages would
 be derived from them. To require them would
 however impose a heavy burden of expense on the
 claimants, and if they are to be furnished in all
 cases, the action of the Commissioners would be
 greatly delayed and a much longer time to complete
 the business of the Commission rendered necessary
 than would otherwise be the case. For these and
 other reasons which I do not deem it necessary to
 state in detail I have come to the determination
 not to insist upon preliminary surveys where the
 description of the land is reasonably definite excep-
 pt in cases where the information which may be
 expected to be derived from such surveys shall
 seem to be essential to the just determination of the
 claim. I agree that the reasons heretofore assigned
 by my associate are sufficient to justify the confir-
 mation of this claim, in a portion of them I do not

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concern. And I concur in the confirmation of the
claim without a preliminary survey
December 18. 1852

Stilwell Hall Lem

Filed in office Dec. 18th 1852

Geo. Fisher
Secy

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Cruz Levantes Claimant vs No. 56. Final Opinion
The United States For reasons of decision &
Decree of Confirmation

Decree of Confirmation. This Board having already by an Opinion heretofore pronounced, and filed on the 3rd day of August 1852 decided upon all the questions, necessary to a final decree of Confirmation on this case, except as to the quantity; and having now fully considered this point, we proceed to declare the further reasons on which our determination is founded. The Decree of the Mexican Government of the 18th of August 1824 and the Executive Ordinance of the 21st November 1828 regulate the quantity of every grant made in virtue thereof, the Maximum being Eleven Square Leagues and the Minimum two thousand Varas. The quantity then being an inherent ingredient of the Grant and expressly prescribed, must be presumed to have constituted the Cardinal or controlling rule of the same; the purpose of the map or deseno being the segregation of the premises from the residue of the public domain; to fix its locality and furnish a guide to its future location and survey. The general nature of this map or deseno as to quantity and the terms of the Grant which expressly reserve for the use of the Nation, whatever should result upon actual measurement, over and above the named quantity within its bounds, clearly show that the intention of the grantor was not an unequivocal grant by metres and bounds to the extent thereof but that the granted quantity lying within those metres and bounds was to be afterwards ascertained by a survey ascertaining the sobrante, if any, and separating it from the private estate of the grantee; the map or deseno being the act of the petitioner, designating the land which he sought; we think it just and proper to restrict to the extent of the limits or bounds of the same map, tho' they should not contain the granted quantity. This construction is in accordance with the intention so strongly manifested by the Mexican Government not to grant the same land to different encroachers. As to the sobrante within the bounds of the map, if there should be any, a grant thereof had no effect, until after the ascertainment by the Government, of the precise

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location of the pre grant, upon whose identification indeed its Existence depends

Henry J Thornton

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In consideration of all which we now proceed to make the following final report or decree of Confirmation. We do hereby decree the claim of the Saca Cruz levantada de, and the same is hereby confirmed to the extent or quantity of two square leagues, or sitios de ganados Mayor, and no more; being the same Saca described in the grant and Especifico referred to therein, and of which pedicel possession was given to the claimant as appears by the evidence. Provided that the same quantity of Saca to him granted, and now here to him confirmed be contained within boundaries called for in the grant and map, to which the grant refers; and if there be less than two square leagues or sitios de ganados Mayor within the Saca bounds then we confirm to him the same less quantity, it being manifest that there is more than two hundred varas, which is the minimum, as eleven leagues are the maximum of Mexican grants

Alonso Hull }
Henry J Thornton }
Comrs

Filed in Office Dec. 18th 1852

Geo. Fisher

Secy

155- No. 56 Cruz Carreras
vs
United States

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

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It appearing to the Sales Section of the Board
that the Land claimed in this case lies South
of the 37th degree of North Latitude and that
no transcript of the proceedings in this case,
has been sent to the District Court of the United
States for the Southern District of California;
it is Ordered by the Board, that the Secretary
make out a copy of all the proceedings and
papers in this case, forward them to the Clerk
of the ^{said} District Court and Notify the Attorney
General of the United States of such action

Motion is made that the foregoing order be
entered in this case and made a part of the
Records

J. H. McKune
U. S. Land Agent

Summit the Land claimed in this case lies in
the State of California South of parallel 37^o
North latitude

J. H. McKune
Land Agent

Filed in office Aug 3rd 1854
Geo. Fisher
Secy

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Order

And it appearing to the satisfaction of this Board that the land hereby adjudicated is situated in the Southern District of California it is hereby ordered that two Transcripts of the Proceedings 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 Southern District of California and the other be transmitted to the Attorney General of the United States.

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Office of the Board of Commissioners,

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

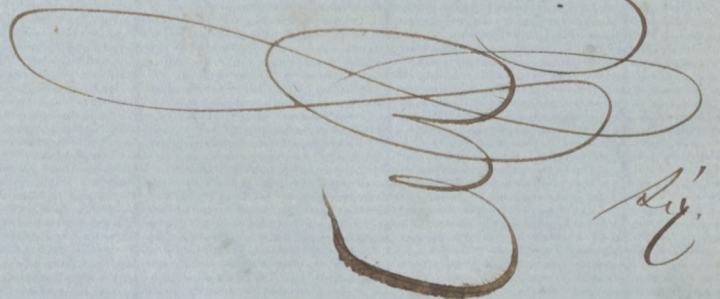

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I, *George Fisher*, Secretary to the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, do hereby certify the foregoing *One hundred and fifty six* pages, numbered from 1 to *156*, both inclusive, to contain a true, correct and full Transcript of the Record of the Proceedings and of the Decision of the said Board, of the Documentary Evidence and of the Testimony of the Witnesses, upon which the same is founded, on file in this Office, in Case No. *56* on the Docket of the said Board, wherein *Cruz Cervantes* is

the Claimant against the United States, for the place known by the name of "*San Joaquin*" or "*Rosa Morada*"

In Testimony Whereof, I hereunto set my hand and affix my private Seal (not having a Seal of Office), at San Francisco, California, this *Seventh* day of November A. D. 1851, and of the Independence of the United States of America the seventy=*ninth*.

G. Fisher



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U. S. DISTRICT COURT
Southern District of Calif
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No. 178. Docket

THE UNITED STATES.

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Cruz Cervantes

"San Joaquin, or Rose
Morada."

TRANSCRIPT OF THE RECORD
FROM THE
BOARD OF U. S. LAND COMMISSIONERS,
In Case No. 56.

Filed, December 19th 1854.
J. C. Carr.
clk.

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Cruz Cervantes Claimant
vs.
United States.

Attorney General's Office,
Washington, D.C. July 22, 1853.

N^o 56

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You will please take notice that

the appeal in the above case from the decision of the
Commissioners to ascertain and settle the private Land
Claims in the State of California to the District
Court of the United States for the Southern District of
California, will be prosecuted by the United States.

Clarking

Attorney General United States.

To the Clerk of the

District Court of the United States

Southern District of California

Monterey.

^{N^o 178}
U. States Dist. Court

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South. Dist. of Califica

N^o 56.
Cruz Cervantes.

Cruz Cervantes
vs
The United States
From Atty. Genl. July 11/53

Notice of Appeal

No. 2

Transcript recd. by att. Genl.
March 20. 1855. See letter of 45.
dated March 29. 1855.

Filed Aug. 20/53

A. Taylor
Clerk

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Office of the Attorney General of the United States,
Washington, 18th December 1854.

Cruz Cervantes }
vs. } 56.
The United States. }

You will please take notice that in the above case, decided by the Commissioners to ascertain and settle private land claims in the State of California in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 25th day of November 1854 the appeal in the district court of the United States for the Southern district of California will be prosecuted by the United States.

Clauting

Attorney General.

Alexander S. Taylor Esq.
Clerk U. S. District Court
Southern District California.

No 178,
United States Dist Court
Southern Dist of Cal.

... *Quigley* *Arriantes*

vs

The United States.

House of Appeal
from Atty Gen

No 56

Filed Feb 5th 1855.

J. E. Jones

Clerk

Office of the Attorney General of the United States,

Washington, 18th Decemr 1854

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Cruz Cervantes
v.
The United States. } 56.

You will please take notice that in the above case, decided by the Commissioners to ascertain and settle private land claims in the State of California in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 25th day of November 1854, the appeal in the district court of the United States for the Southern district of California will be prosecuted by the United States.

Cluskey

Attorney General.

No 178

U. S. Court S. Dist.

The United States

vs,

Cruz Cervantes

Appeal Notice.

Filed May 11th 1859.

J. E. Fox
clerk

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

Los Angeles County, State of California.

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Cruz Cervantes }
ads } No. 178 (Transcript No. 56.)
The United States }

To the Honorable Isaac S. H. Ogier Judge of the
District Court of the United States for the Southern
District of California.

The petition of Pacificus Ord (of Los Angeles County)
Attorney of the United States for the Southern Dis-
trict of California, who petitions in this be-
-half for the United States, and being present
here in Court in his proper person, in the name
and behalf of the United States, represents as follows.
That hitherto, to wit, on or about the 20th day of
February A. D. 1852 Cruz Cervantes presented a
petition to the Commissioners to ascertain and
settle the private land claims in the State of
California, claiming the tract of land called
San Joaquin, or Rosa Morada in the County of
Santa Clara in the words and figures following,
viz. "Cruz Cervantes a citizen of said State gives
" notice that he claims by virtue of a grant
" from the Mexican Nation, a tract of land

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" situated in the County of Santa Clara, in said
" state, and known by the name of San Joaquin
" or Rosa Morada, with the boundaries described in
" the grant thereof, to wit. On one side the arroyo of
" San Felipe; on the second side, the hills or mountains
" of San Joaquin; on the third side the arroyo of
" Santa Anna, and on the fourth a line drawn
" through the plain of San Juan.

" Said land was conceded to claimant by a grant
" issued on the 1st day of April A.D. 1836, by Nicolas
" Gutierrez, Superior Political Chief, ad interim, of
" California, and thereby authorized to grant lands
" in the name of, and on behalf of the Mexican
" Nation.

" On the 18th of February 1841 juridical possession
" of said Land was given to Claimant by Juan
" Miguel Anzar Judge of first instance of that
" Jurisdiction.

" Said Land has been occupied by Claimant accor-
" -ding to law, and the directions contained in
" said grant, and is now held ^{by} him in quiet pos-
" -session.

" There is no conflicting grant to said Land, or
" any portion thereof, in the knowledge of Claimant.

" Said Land has never been surveyed, but its bounda-
" -ries are natural, and well known, and may be
" easily traced. It is supposed to contain the quan-

"-tity of Two Sitios de Ganado Mayor more or less."
 " A Copy, and translation of said grant, and a
 " copy of said act of judicial possession are
 " herewith presented, and the originals are ready
 " to be produced and proved as may be required.

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" Claimant requests a speedy examination of his
 " said claim, and its recognition and confirmation.
 " Your petitioner further represents that thereafter, to-
 " wit on the 18th day of December A.D. 1852 the said
 " Commissioners confirmed, by final decree, the said
 " claim of the said Cruz Cervantes in the words, and
 " figures following, to wit.

" In consideration of all which we now proceed
 " to make the following final report, or decree
 " of Confirmation. We do hereby decree the claim of
 " the said Cruz Cervantes be, and the same is her-
 " by confirmed to the extent or quantity of two
 " square leagues, or Sitios de Ganado Mayor,
 " and for no more; being the same land descri-
 " bed in the grant and expediente referred to
 " therein, and of which judicial possession
 " was given to the Claimant as appears by
 " the evidence".

" Provided that the said quantity of Land to
 " him granted, and now here to him confirmed
 " be contained within boundaries called for
 " in the Grant and Map, to which the grant

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refers; and if there be less than two square leagues or sitios de Ganado Mayor within the said bounds then we confirm to him the said less quantity, it being manifest that there is more than two hundred varas, which is the minimum, do eleven leagues are the maximum of Mexican Grants."

"Hiland Hall } Comrs"
"Harry J. Thurston }

"Filed in office Dec. 18th 1852, Geo. Fisher Secy".
That thereafter, to wit, on the 15th day of December A.D. 1854 a duly certified transcript of the said decree, and proceedings, and the papers and evidence on which it was founded in said cause, was filed in the office of the Clerk of the District Court of the United States for the Southern District of California and marked No. 178 (Transcript No. 56) reference to which it is prayed may be had and made a part of this petition

That on the 3rd of March A.D. 1853, and again on the 30th day of November A.D. 1854 the Honorable Caleb Cushing Attorney General of the United States received a duly certified duplicate of said transcript of said final decree and proceedings of said Commissioners in said cause (No. 56) and the papers and evidence on which

said decree was founded.

That thereafter, to wit, on the 20th ^{of} August A.D. 1853, and again on the 5th day of February A.D. 1855, the said Attorney General of the United States, filed or caused to be filed, on behalf of the United States, a notice with the said Clerk of said District Court for the Southern District of California, that the appeal, in said cause of Cruz Cervantes, vs. the United States, from the decision of the said Commissioners to ascertain and settle the private land claims in the state of California, in the District Court of the United States for the Southern District of California would be prosecuted by the United States.

Your petitioner further represents that the said land claimed as aforesaid is within the jurisdiction of this Honorable Court.

And your petitioner further represents, and insists that the said decree of said Commissioners is erroneous, and ought to be reviewed, reversed, and set aside, for many errors and imperfections of law and evidence apparent in said certified transcript of said cause now in appeal from said Commissioners to this Honorable Court.

And your petitioner further represents that the said claim is invalid, and the said

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decree erroneous, on the following grounds.

I. And the said Attorney denies all and singular each and every allegation in the said petition of said Claimant, to said Commissions of said date. And he further denies that any grant for said land was ever made as alleged in said petition. And he denies further that the said Claimant has shown any ~~xxx~~ sufficient evidence of the validity of the said claim.

II. That the said alleged grant of Nicolas Gutierrez was made in violation of the 4th Article of the Colonization law of Mexico of the 18th of August A.D. 1824, in this; that the land granted, as alleged by Claimant, was and is within ten leagues of the Sea Coast; and there is no evidence shown by Claimant, that the Supreme General Executive power of Mexico, previously approved of the Colonization of the public lands in Upper California, lying within ten leagues of the Sea Coast. and it is denied that such previous consent of said Supreme General Executive power of Mexico in such case was ever had.

III. That at the date of the said alleged grant the said land claimed as aforesaid,

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was occupied and in the possession of the Missions of the territory of Upper California; and it was held and occupied, particularly, by the Mission of San Juan Bautista; and could not therefore be colonized.

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IV. That the said alleged grant has not the conditions required by, and is not made in entire conformity with the laws of Mexico of the 18th day of August A.D. 1824, and the regulations for the colonization of the territories of Mexico of the 21st ^{day of} November, A.D. 1828.

V. That there is no evidence that the said alleged grant was ever approved by the Territorial Deputation, or Departmental Assembly of California, or the Supreme Government of Mexico.

VI. That the said alleged claimant fails to show a definitive title for the land claimed as aforesaid.

VII. That there is no evidence that the claimant performed the conditions of the said alleged grant, by building a house on the said land, and having it inhabited, within one year from the date of the said alleged grant. And the said claimant wholly failed to perform the said conditions, of the said alleged grant; and the said alleged grant therefore lost its

vitality, and the said claimant ~~therefore~~ lost his right to the said alleged land, under said alleged grant - if he ever had any.

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VIII. That the pretended juridical acts of survey and possession of said land, by Juan Miguel Anzar, dated on or about the 18th day of February A. S. 1841, were not made according to the said alleged grant, and map referred to therein; nor according to the ordinance or law; and that they are vague, indefinite and void for uncertainty.

IX. That the said Anzar had no lawful authority to perform the said pretended juridical acts; for the reason that at the pretended date of said acts, the said alleged grant had lost its vitality, ^{reason of} by the non performance of the said conditions ^{of the said grant,} by the said Cervantes, as aforesaid; and for the further reason, that the said alleged grant had never received the approval of the deputation or assembly of California, nor that of the Supreme government of Mexico. And the said pretended juridical acts were therefore void.

X. That the said alleged grant of said land to said Cruz Cervantes, by said Nicolas Gutierrez, dated the 1st. day of April A. S. 1836, contains no sufficient description of the

locality, extent, and boundaries of the land, by which it can be identified, and surveyed. And the said alleged grant is vague, indefinite, and void for uncertainty. And the said claimant having no valid right or title, derived from the Spanish or Mexican Government, to the said land claimed by him, as aforesaid, the lawful right, or title in and to the said land, was acquired by, and it now belongs to the said United States, by virtue of the treaty of peace, friendship, limits, and settlement with the Republic of Mexico, dated at the City of Guadalupe Hidalgo, February 2nd AD. 1848.

And no proof having been made by said claimant of the allegations of his said petition, or in support of his said claim filed as aforesaid, no decree ought to have been made, or grounded thereon; but the said petition ought to have been dismissed and said claim rejected by said Commissioners, upon the grounds aforesaid. Wherefore the said Pacificus Ord, Attorney of the United States for the Southern District of California, for and in behalf of the United States, by reason of the premises, and in pursuance of an act ^{of Congress} entitled "An act to as-

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-certain, and settle the private land claims in the state of California". Approved March 3rd A. D. 1851, and the laws and statutes in such case made and provided, prays that the said Cruz Cervantes may be served with a copy of this petition, and that this Honorable Court will review the said decision, or final decree of Confirmation, of said Commissioners to ascertain and settle the private land claims in the state of California, and decide on the validity of the said claim of said Cruz Cervantes, for said land claimed and confirmed as aforesaid; and that the same may be deemed invalid. And all such other orders, judgements, or decrees, as may be just. With costs and general relief.

J. Ord

Attorney of the United States
for the Southern District of Cal.

No 178.

United States District Court,
Southern District of California.

Cruz Cervantes.

vs.

The United States.

Petition for review.

Filed May 18th, 1855.

C. E. Carr.
Clerk.

United States of America
Southern District of California } S.S.

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The President of the United States
To Cruz Cerrantes,

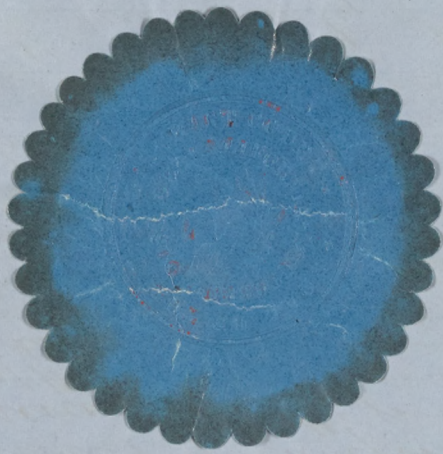
Greeting,

Take notice, that a petition a copy of which
is herewith served upon you has been filed
against you, and each of you in the District
Court of the United States in and for the Southern
District of California on the eighteenth day of May
— in the year your Lord one thousand
Eight hundred and fifty five. at the City and
County of Los Angeles. by Reception and
attorney for the United States for the Southern
District of California, praying the said Court to
review upon the grounds therein set forth the decision
of the Board of U. S. Land Commissioners to ascertain & settle
the private land claims in the state of California of the claim
of Cruz Cerrantes, to a tract of land known by the name of San Joaquin
or San Ignacio in the County of San Clara containing about two
square leagues of land more or less, which said claim was presented to said Commissioners
in or about the day of December 1852 and by them confirmed on or about the 18th day
of December 1852 and that you ^{said} and each of you are required
to appear at ^{said} Court in said City within ten days
after the service hereof, if served on you within
the said County of Los Angeles. and within
twenty days if served on you in the County of
San Diego or San Bernardino and within forty days if
served on you in any other County of said
State exclusive of said day of service and answer
said petition or that judgment the plaintiff
will apply to the Court for ^{the} relief demanded therein.

In witness whereof I have hereunto set my

I have and affixed the seal of the said Court
 this thirteenth day of June in the year of
 our Lord one thousand Eight hundred and fifty five
 at Monterey. aforesaid.

Chas. E. Carr Clerk
 by Alex S. Taylor Depy. Clerk



Market's Court
 Copying Summons 90
 Answer " " 3.00
 Billings 390 } 3.00
 Mileage 26 } 30.20
 Printing Petition 3.00
 Postage on fee 30.20
 \$27.30

Shewed this summons along with the proper copy
 of the Petition on these Alle for error committed
 in the County of Monterey by returning to him
 personally a true copy of the same this 13th day
 of June 1855

Edward Hunter
 N. S. Marshal

United States of America
 South. Dist. of California
 U. S. District Court
 Copy Certanty
 advs.
 The United States
 Appls.
 Summons
 Recd. June 13th 1855
 Edward Hunter
 N. S. Marshal

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

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The United States, appellants, }
Versus }
Cruz Cervantes. }

The answer of Cruz Cervantes to the petition filed herein by the attorney for the United States, respectfully shows: That the claim of said Cervantes for the tract of land in said petition mentioned was presented to the Commission for settling land titles in California under the provisions of an act of Congress approved 3^d March, 1851, providing for the organization & prescribing the functions of said Commission. That said Commission proceeded, under the authority of said act of Congress, to examine said claim on the testimony presented therein, and on the 3^d day of August, 1852, decided on the validity of said claim, & decided it to be valid; and that no subsequent proceedings have been taken by the United States, which can tend to invalidate said decision, or to authorize any court of the United States to review the same, by appeal or otherwise; but that said decision became final in favor of the

claimant at the expiration of ninety days after its delivery. That the subsequent act of Congress, under which it is supposed that this proceeding is undertaken, namely the act of 31st August, 1852, could not affect a decision that had been previously rendered, and was not apt to operate retroactively; it hence could not, and was not apt to, operate on the decision rendered by said commission herein, or to authorize any process for its invalidation or review: —

That if said last mentioned act of Congress could, or was intended to, apply to said cause, no proceedings have been taken under it which authorizes this Court to take cognizance of any appeal herein; and this appeal ought, in pursuance of said act, & for want of due proceedings thereunder on the part of the appellants, to be dismissed.

And for further answer to the petition herein filed by the attorney of the United States, it is shown, that said cause has passed through all the tests and all the tribunals that any act of the Congress of the United States, or any law whatsoever, authorizes, not only for the reasons herein before stated, but because: the decision rendered by the commission, as recited in said petition, was heretofore

reviewed, on appeal therefrom, by the District Court
of the United States for the Northern District of
California, and by said court on the 31st day
of October, 1853, reversed & annulled; & from
said decision of said District Court an appeal
was taken by said Cervantes to the Supreme
Court of the United States, and said last mentioned
tribunal, by a decree entered in this December
term 1853, reversed & annulled the decision of said
District Court, thereby leaving in full force & effect
the decision of said commission. And ~~hereafter~~
~~for this~~, ^{it is shown, that the United States further prosecuted, and} said District Court of the United States,
for the Northern District of California, notwithstanding
the said decree of the Supreme Court of the United
States, & during the pendency of the present appeal in this Court,
again entertained jurisdiction of said cause,
as
an appeal from said Commission, & in the June
term of said court 1855, rendered judgment
therein, affirming the decision of said commission,
& declaring the claim of the appellee herein to
be valid; & from that decision the United States have
appealed to the Supreme Court of the United States,
& said Cervantes is instructed & believes that he
ought not, & cannot by any lawful proceeding,
be held to any answer or defence in the same
cause of action by the same Plaintiff in
different Courts & different localities, in suits
pending at the same time. — Wherefore
said Cervantes prays that this court ~~that~~

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~~This Court~~ will not entertain jurisdiction herein, but direct ~~the~~ ^{the} appeal, ^{now pending} to be dismissed, & that the ^{appellee} be relieved from further attention & costs in the premises. ———— And

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for further answer, it is alleged that the said claim of servantes to the land in his petition to said commission mentioned, is valid, & ought to be confirmed; & he prays this Court, should it entertain jurisdiction herein, to declare the same to be valid, & to confirm it. ———— And said servantes is further

instructed, that he has a right to protest, & he does therefore hereby solemnly protest, that he received the land which he claimed before

said Commission nearly twenty years ago, by a duly formed conception thereof from the duly constituted authority of the government of Mexico, & in conformity with the laws thereof, & enjoyed the same, without any question or doubt of his right thereto until after the passage of the act of Congress heretofore mentioned of 3^d March 1851; & that the long delay, enormous expenses, & multiplied law suits to which he has been & is now subjected in defence of his rights thus heretofore obtained & enjoyed, are in violation of his rights, as a citizen of the United States, in violation of the treaty of amity between the United States & Mexico, & of natural justice. And he prays this honorable court

to grant time such relief in the premises as
may be in its power.

Baylis's attorney,
Jones & Strode,
Survivors of Jones, Tompkins & Strode.

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No. 178.

U. S. District Court,
Southern District of Cal.

Cruz Cervantes
Appellee
vs.
ad.

The United States
Appellant.

Answer of Appellee.

Filed Sept 6th 1885.
C. E. Jam.
C. K.

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Wm Carey Jones, Atty for
Appellee.

United States of America, }
Southern District of Cal. }

Cruz Cervantes,

appellee.

vs.

The United States,

Appellant.

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Testimony of Pacifius Ord, a witness on the part of Appellee, in the above entitled cause now on appeal to the Hon the District Court of the United States for the Southern District of California, to be used on the trial of said cause, taken before me Charles E. Carr, U.S. Commissioner for the Southern District of California, at Los Angeles September the 10th A.D. 1855.
Present P. Ord, U.S. Atty. Wm Carey Jones, atty for Appellee. P. Ord, being by me first duly sworn says as follows.

Question— Do you know the locality of the land claimed in this case by Cruz Cervantes, & if yes, state whether you know the locality of the line of 37 degrees north latitude in California, & further whether the said land is north or south of said line?

Answer. — I know the locality of the said land. It is in Monterey County, California. And I know the locality of the line of 37° north

latitude in California. And the land
claimed by Cruz Cervantes, in this case
lies south of the said line of 37° North latitude.
Sworn to & subscribed }
before me, this 10th day of } *P. M.*
Sept, A.D. 1850. } *[Signature]*

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J. E. Farr.
U.S. Com.

No 178.

U.S. Dist Court.
South Dist of Cal.

Cruz Cervantes
Appellee.
— adt. —

The United States
Appellant.

Deposition of P. O. D.

Filed ~~Nov~~ Sept 10, 1855.

J. E. San
Att.

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3 50
3 44
3 4

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

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The United States, appellants
vs.
Cruz Cervantes. S

On motion of the attorney of the United
States, it is ordered by the Court

~~and~~ That additional testimony may
be taken herein by either party.

P. M. [Signature]
Clerk

Cruz Corrales,

vs.

The U. S.

Motion of US Atty.
for additional testimony.

Filed Sept 10th 1880

J. E. Jan.
clerk.

W. P. Miller

Cruz Cervantes appellant }

vs

The United States appellee }

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The claim in this case is founded upon a grant from Nicolas Gutierrez the Political Chief ad interim of upper California, dated April the 14 1836, to the claimant, Cruz Cervantes, the genuineness of the grant is not disputed, It is in the usual form and has the usual conditions annexed. - This case was heard and determined by the Commissioners to ascertain and settle private land claims in the State of California, the Commissioners confirmed the claim and an appeal was taken to the District of the Northern District of California under the act of Congress passed in 1851 - That Court reversed the decision of the Commission ~~as and sent the case~~ and an appeal was taken to the Supreme Court of the United States, upon the hearing the Supreme sent the case back upon the ground that the jurisdiction of the District Court did appear upon the record, that it did not appear upon the record that the land was within the Northern District, and with leave to that Court to make certain amendments - Since the proceedings had in the Supreme Court, the manuscripts of the record of proceedings and decision of the Commissioners, together with the papers and evidence upon which said decision was founded, has been duly filed according to law, with the Clerk of this Court, a notice of appeal has also been filed, a petition for review on the part of the United States, and an answer by the claimant

The United States.) United States
appellants.) District Court for the
vs) Southern District of
Cruz Cervantes) California
178 SD appellee) Special Term.

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This cause comes on to be heard, on an appeal from the final decision of the Commissioners, to Ascertain and settle private land claims in the State of California, under an act of Congress passed on the 3rd of March 1851, on a transcript of the proceedings and decision and the papers and evidence on which said decision was founded, and additional taken before this Court and the depositions of witnesses taken before a United States Commissioner, and it appearing to the Court that the said transcript has been duly filed according to law, and Counsel for both parties having been heard; It is ordered adjudged and decreed, that said decision be and the same is hereby affirmed, and it is further ordered adjudged and decreed, that the claim of the appellee to the land as described in the record, is a good and valid claim, and the same is hereby confirmed to the extent of two square leagues, provided said quantity be contained within the limits called for in said record; and in case there be a less quantity, the claim of appellee is confirmed to such less quantity -

are also on record.

The claimant in his answer sets up, that this case has already tried in the District Court ~~of~~ the Northern District of California & that is a bar to any proceeding in this Court. The act of Congress passed 1857 provides that a review of the decision of the Commission may be had ~~in~~ the District Court in which the land lies, the act of 1852 that filing of the transcript ~~is sufficient in the Dist~~ with the Clerk of the District Court shall "ipso facto" operate as an appeal for the party against whom the decision of the Commission may have been given, ~~and that the~~ and that if the United States be the appellant, the Attorney General shall file a notice of intention to prosecute the appeal within six months after he shall have received the transcript, which the law provides shall be sent to him — In this case all these requirements of the law have been complied with.

The answer of claimant does not allege that the land claim is not in the Southern District nor does he offer any evidence to show that such is the case, On the other ^{hand}, the affidavit of Pacificus Ord filed ~~in~~ on record in this case, shows that the land does lie ~~within the~~ within the Southern District of California and within the exclusive jurisdiction of this Court, as far as the N S Dist Court of the Northern District is concerned; the objection of claimant, is in the nature of a plea of abatement and should have been sustained by some evidence ~~that that the Court of the Northern Dist~~, the Appellant having complied with all the requirements of the law, and having

District

shown that the land is in the Southern -
and there being no evidence to show that the
Case has been already ^{tried & determined} by a Court having
Jurisdiction, the plea of the Appellee is
overruled and the Court will go on to
consider the Case upon its merits —

The Claim in this case is based upon a
grant from Nicholas Gutierrez, Political
Chief ad interim of Upper California
~~of the lands due to Cruz Cervantes the pre~~
sent Claimant, of the lands claimed, and
dated 1st of April 1856.

The genuineness of the grant is ^{not} ~~not~~
disputed. It is of the usual form, and ^{contains} ~~has~~
the usual conditions

The ^{copy} Act of Judicial possession and the ^{copy}
of the expediente found among the Archives
in the possession of the Surveyor General
are also on record as part of the documentary
evidence in this case —

all the objections urged against the validity of
this grant have already been considered and
passed upon by this Court, and it is not deemed
necessary to discuss them ^{generally} at this time

One of the objections is that the land was not
occupied within the prescribed time, that
no house was built within the year & that
the judicial possession was not given until
1851 six years after the date of the grant;
It has been decided both by ~~this court~~ and the
Supreme Court of the United States in the
Cases of Fremont vs U States, ~~and others~~ that the
conditions of these grants were subsequent
conditions and that the grant ~~is~~ ^{vested} a

a present and immediate interest, and
that a breach of the conditions did ~~not~~ annul
the grant, but that in such cases it might be
denounced, the grant was defeasible but until
the denouncement the fee remained in the
grantee. - the evidence in this case disclose
such a state of facts as to bring the grant within
the rule laid down in Freemantle's case. -

~~And therefore we think the opinion of
the Court should be affirmed~~

Another objection urged is that the grant is
void, for vagueness and uncertainty in
the description.

The original petition of Claimant to the
Governor set forth the limits in distinct and
definite terms, within which the land he
asked for was situated, the grant is for two
leagues of land, ~~providence was given him~~
~~of about that quantity within said limits~~
within those limits, ~~providence was given~~
~~was given him according to the judicial~~
survey calls for that quantity, and the decree
must be for a confirmation of the claim
to that extent only -

No. 178.

Cruz Cervantes
and

The United States

Opinion & Decree
of the Court.

Filed 24th Sept 1855-

P. B. Core clerk

By A. W. Ron dep

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Cruz Cervantes } N^o. 178.
ad }
The U States } In U.S. Dist Court & Southern Dist of
Cal: Sept. term 1858. Los Angeles.

I admit service of application for
appeal of U States, to Supreme Court
of U States, made, & allowed at this
Term by said Court

Wm Carey Jones,
attly. for Cervantes.

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1858

N^o 178
Cruz Curator
ad
The N^o 178

Acknowledgment of
notice of appeal
by the State

Filed Sept 28th 1855
C. E. Carr cler
By J. W. Prop. orp

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W. Casey Jones for
Appellant

UNITED STATES OF AMERICA, SS.

THE PRESIDENT OF THE UNITED STATES OF AMERICA,

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

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greeting:

Whereas, lately, in the District Court of the United States, for the Southern District of California before you, _____ in a cause, between the United States, appellants and Cruz Cervantes, claimant and appellee, the decree of the said District Court was in the following words, viz: -

"This cause came on to be heard on an appeal from the final decision of the Commissioners, to ascertain and settle private land claims in the State of California, under an act of Congress, passed on the 3^d of March, 1857, on a transcript of the proceedings and decision, and the papers and evidence on which said decision was founded, and additional testimony taken before this Court, and the deposition of witnesses taken before a United States Commissioner, and it appearing to the Court that the said transcript has been duly filed according to law, and counsel for both parties having been heard - it is ordered, adjudged and decided that said decision be and the same is hereby affirmed, and it is further ordered, adjudged and decreed, that the claim of the appellee to the land as described in the record, is a good and valid claim, and the same is hereby con-

confirmed to the extent of two square leagues, provided, said quantity be contained within the limits called for in said record, and in case there be a less quantity, the claim of appellee is confirmed to such less quantity."

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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 five* the said cause came on to be heard before the said Supreme Court, on the said transcript of the record, and was argued by counsel: On consideration whereof, *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.* — *May 14-*

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

COSTS: _____

Clerk,\$ _____
Attorney, ...\$ _____
\$ _____
\$ _____

Paid by

Wm. H. Carroll

Clerk of the Supreme Court of the United States.

No 176, December Term, 1855.

MANDATE

SUPREME COURT UNITED STATES.

M. Scales vs Servants

Filed Aug 21 1865

John A. Whelan
clerk

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~~SD~~

Dura

At a stated term of the District Court
of the United States of America for the
Northern District of California, held at the
Court House in the City of San Francisco,
on Wednesday, the 27th day of June, in the
Year of our Lord one thousand eight hundred
and fifty-five —

N. H. McAllister

Present — The Honorable ~~Edwin~~
Hoffman, jr. District Judge, and the
Honorable M. H. McAllister, Circuit
Judge.

Cruz Cervantes,
versus
The United States

This cause came on to be heard
at the above ^{on the transcript and evidence} stated term, and the arguments
of course for the United States and for
the claimant Cruz Cervantes being heard,
it is hereby

ordered, adjudged and decreed that
the decision and decree of the Board of Commissioners for
the ascertainment and settlement of private land claims in
California made in this case be confirmed, and that the
claim of the appellant, Cruz Cervantes, be, and the same is,
hereby confirmed to the extent of two square leagues or
sitios de ganado mayor, and for no more; being the same
land described in the grant and expediente referred to
therein, and of which judicial possession was given to him
as appears by the evidence; provided that the said quan-
tity to him granted, and now to him confirmed, be contained
within the boundaries called for in said grant, and map to
which the grant refers; and, if there be less than two
square leagues, or sitios de ganado mayor, within the said
bounds, then there is confirmed to him the said less quan-
tity.

At a Special Term of the District Court of the United States of America, for the District of California, held at the Court Room, in the City of San Francisco, on Wednesday the 8th day of October in the year of our Lord one thousand eight hundred and seventy three.

Present: The Honorable Ogden Hoffman,
Judge.

Cruz Cervantes
Claimant and appellee
vs
The United States
Appellants } No. 178.

Whereas on the 21st day of August 1865, being a day in the Regular June Term A. D. 1865, of the District Court of the United States for the Southern District of California, the following order was made and entered in the above entitled cause.

Regular June Term A. D. 1865
Monday August 21st A. D. 1865.

Cruz Cervantes
Claimant and App^{ee}
vs
The United States
Appellants } No. 178.

Now at this day comes W. E. Lovett Esq. on behalf of Claimants & Appellee and presents the Mandate of the Supreme Court of the United States, which is ordered to be filed, and

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Whereas the said Supreme Court did at its December Term A. D. 1855, order, adjudge and decree that the decree of the United States District Court for the Southern District of California, confirming to the claimant and appellee in the above entitled cause the land set forth and described in the record to the extent of two square leagues within the boundaries be affirmed; and command that such proceedings be had in said U. S. Dist. Court as according to right and justice and the laws of the United States ought to be had notwithstanding the appeal sued out and allowed the United States to the Supreme Court of the United States from the said decree of said District Court.

Now therefore, It is Ordered and adjudged that the said appeal heretofore, to wit: on the 25th September A. D. 1855, sued out and allowed the United States from the decision and decree of said U. S. Dist Court be and the same is hereby dismissed. And it is further Ordered

and adjudged that the claimants and appellee be allowed to proceed under said decree of said Dist. Court rendered on the 24th day of September A. D. 1865, or under a final decree - which said order is entered on page 205. of a book marked on the back "Records No. 1. Dist. Court South. Dist. Cal." now in the custody of the Clerk of this Court.

And whereas it appears in the face of said order that a clerical error has occurred in entering the same in said book, and that the figures "1865" in next to the last line of said order as written in said book should be "1855," and that the error has occurred by the misperision of the Clerk of said Court, it is therefore ordered, that said error be and the same hereby is corrected, so as to substitute the said figures 1855 in the place of 1865.

Alfred Hoffman
Dist. Judge

178. S. D.
U. S. Dist. Court
Dist. of Cal^a

Cruz Ferrantes
Claimant & Appellee

vs

The United States
Appellants

Order Correcting Minute
order of August 21st AD 1865

Filed October 8th AD
1873.

Edw B Potter Clerk
By J. H. Grimwood
Deputy Clerk.

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178. S. D.

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Attorney General's Office,
Washington, D.C. 11th July, 1853.

Cruz Cervantes Claimant

vs.

The United States.

You will please take notice that
the appeal in the above case from the decision of the Commis-
sioners to ascertain and settle the Private Land Claims in
the State of California, to the District Court of the United
States for the Southern District of California, will be prose-
cuted by the United States.

Chauncey

Attorney General United States.

To The Clerk of the District
Court of the United States
for the Southern District
of California
Los Angeles.

178
SD

Cruz Cervantes Claimant.
^{vs.}
United States.

Attorney General's Office,
Washington, D.C. July 22, 1853.

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

Edwin

Attorney General United States.

To

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

San José.

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P.D.