

CASE NO.

86

NORTHERN DISTRICT

---

LOS ULPINOS GRANT

---

JOHN BIDWELL

CLAIMANT

LAND CASE 85 N.D.

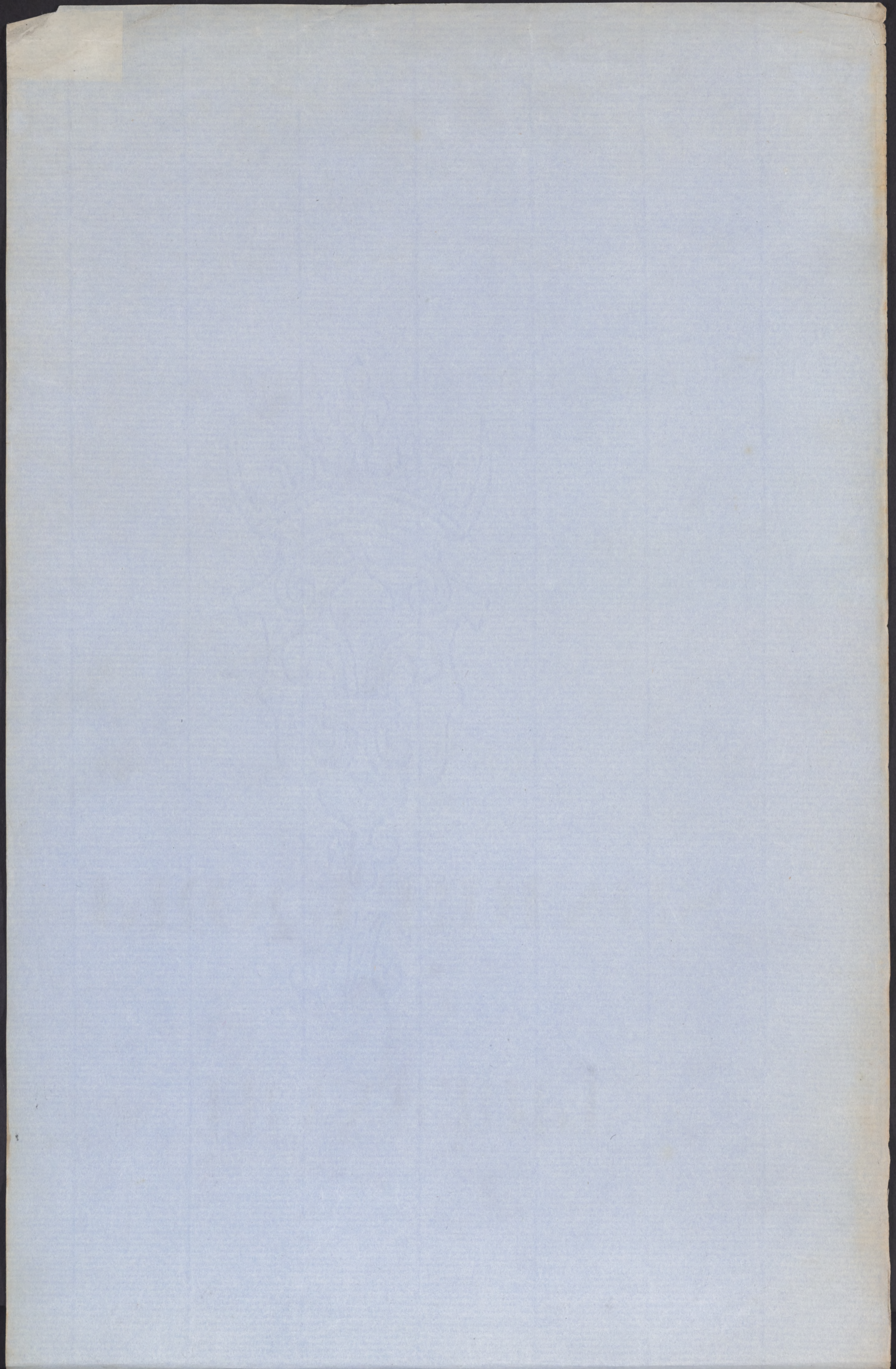
44 pages.

OCT 10 1962

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U S A  
25% COTTON FIBER  
FLOWER BOND  
Pampered

319



86 ND  
PAGE 1

# TRANSCRIPT

OF THE

# PROCEEDINGS

IN CASE

NO. 319

*John Bidwell*

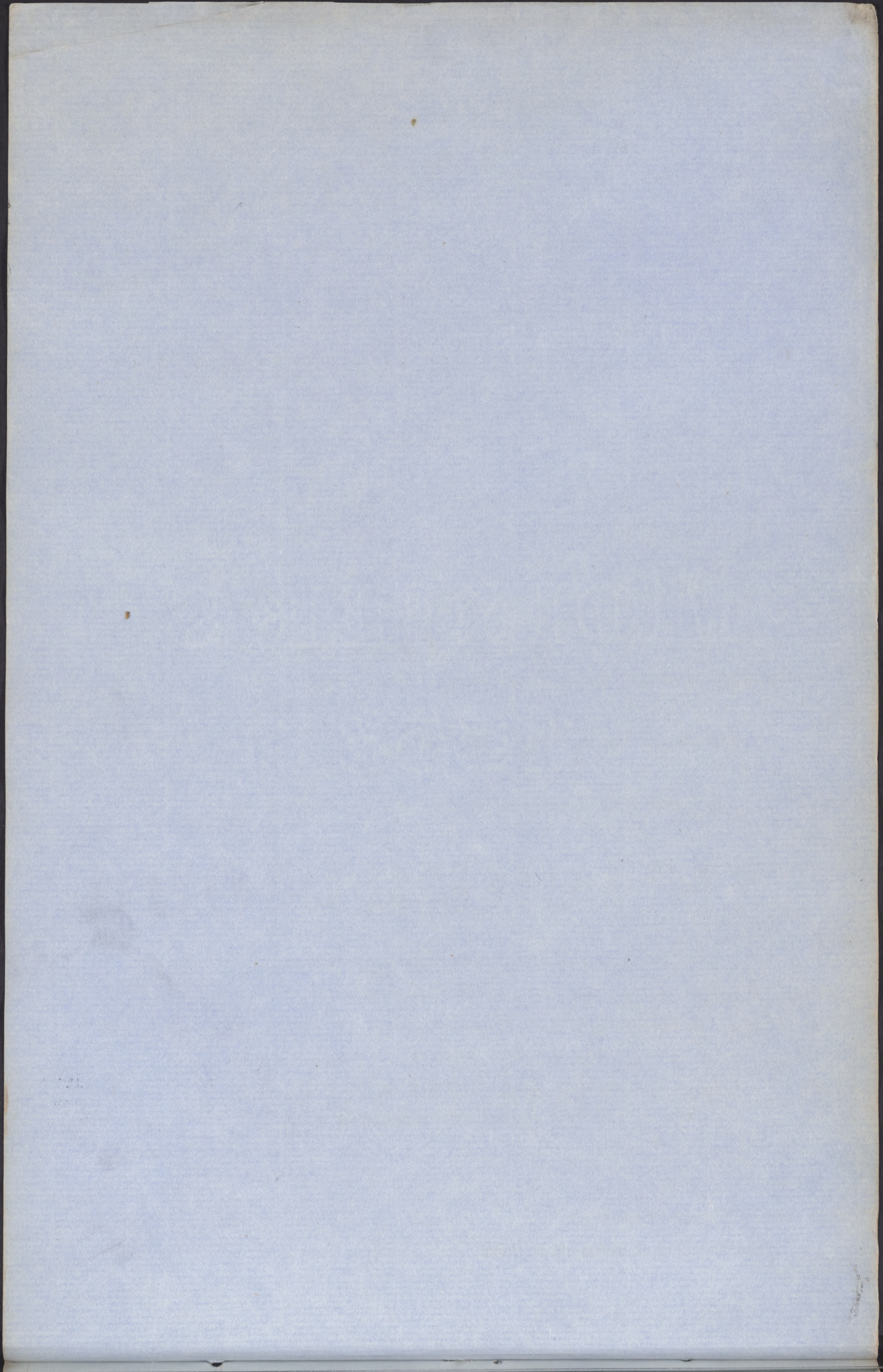
CLAIMANT

VS.

THE UNITED STATES, DEFENDANT,

FOR THE PLACE NAMED

*"Los Ulpinos."*



Office of the Board of Commissioners,

To ascertain and settle the Private Land Claims

IN THE STATE OF CALIFORNIA.

86 ND  
PAGE 2

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

The Petition of *John Bidwell* for the Place named "*Los Alpinos*" was presented, and ordered to be filed and docketed with No. 319 and is as follows, to wit;

(Vide page 3 of this Transcript.)

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

*San Francisco Feb. 3<sup>d</sup> 1853.*

In case no. 319 John Bidwell for the place named Los "Alpinos" the deposition of Samuel J. Stensley a witness in behalf of the claimant taken before Commissioner Melana Hall, with document marked H. H. no. 1 annexed thereto was filed:

(Vide page 3 of this Transcript.)

*San Francisco September 21<sup>st</sup> 1853.*

Case no. 319 called, submitted on Briefs on both sides and taken under advisement,

2

San Francisco Jan. 17 1854.

In the same case Commissioner Thompson  
completely delivered the opinion of the Board  
confirming the claim,

(Vide page 16 of this Transcript)

86 ND  
PAGE 3



3

Petition of  
John Bidwell

To the Honorable the Board of U.S. Land Commissioners  
 petitioners to settle private land claims in California  
 The petition of John Bidwell respectfully sheweth that he  
 is the Claimant of four Leagues of land in Solano County  
 on the west side of Sacramento River bounded N.W.  
 by waste lands at the N.E. by the Ulpino Pond or Laguna  
 S.E. by the Sacramento River and S.W. by vacant lands  
 embracing four square leagues of land that he received a grant  
 for the same from Manuel Michittonna in the year AD  
 1814 by virtue of the Colonization Laws of August 18  
 1824 and the instructions and regulations of November  
 21. 1828 his letter of general powers and instructions and  
 the various laws of Mexico affecting grants of land  
 said Lands have not been surveyed by the U.S. Surveyor  
 General there is no conflicting claim to it known to your  
 Petitioner The evidence upon which your Petitioner relies  
 are the records of this grant in the Office of the Surveyor  
 General of the U.S. for California, Original papers, Copies of  
 which are filed herewith and the testimony of witnesses to  
 be produced before your Honorable Board

86 ND  
PAGE 4

Respectfully submitted for such action as the justice and  
nature of the claim may require

E. O. Crosby

Filed in Office Sept 3<sup>rd</sup> 1852 of Counsel

Geo Fisher Esq

Deposition of  
Sam J Kinsley

San Francisco Feb 3 1852

On this day before me Heiland Hoall came Samuel  
J Kinsley a witness in behalf of the claimant John Bidwell  
petition N<sup>o</sup> 319 and was duly sworn his evidence being  
given in English

The U.S. Associate Law Agent was present  
 In answer to inquiries by the Claimants learned the  
 Witness testified as follows  
 My name Samuel J Kinsley My age is thirty six years  
 + I reside at San Jose - I am acquainted with the hand  
 writing & signatures of Manuel Michittonna & Manuel  
 Jimeno A paper is shown me purporting to be a grant

4

86 ND  
PAGE 5

to Juan Bidwell dated 20<sup>th</sup> of November 1844 his heirs Ma-  
-ria & Maria He He N<sup>o</sup> 1 I believe the signatures of said  
Machitoma & persons to said paper to be genuine  
I am acquainted with the land called Ulpinas mentioned  
in said grant, it is situated on the West bank of the Sacra-  
-mento river ten or twelve miles above its junction with  
the San Joaquin - In the fall of 1844 I took Mr Bidwell  
on board of a Schooner to the land with some hands to make  
a settlement they remained there & built an adobe house  
in which an Englishman who had charge of building rem-  
-ained during the winter The next season a small parcel  
of the land was cultivated and in the winter of 1845-6 the  
house was occupied by Pearson & Reading & hands there  
has ever since been persons living on the place claiming  
under said Bidwell There are now several dwelling houses  
on the land - Some three hundred acres are enclosed  
by fences &c it is occupied with cattle horses & hogs

Saml J Keenley

Given & subscribed by me

Midland Keale Lem<sup>r</sup>

Filed in Office July 3 1853

Record in W B Vol 2 p 534

Geo Fisher Secy

2.

f

Expediente  
promovido por el Ciudadano D. Juan Bidwell  
en solicitud del terreno conocida con el nombre  
de los Ulpinos.

86 ND  
PAGE 6

(1845)

Nº 387.

5.

86 ND  
PAGE 7

Sello Cuarto Los reales.

Habilitado provisionalmente por la estatuta maritima del puerto de Monterrey, en el Departamento de las Californias para los años de mil ochocientos cuarenta y <sup>cuatro</sup> mil ochocientos cuarenta y cinco.

Mi obediencia.

Pablo de la Guerra.

(Seal) Monterrey

E. S. Gobernador

Abril 30 de 1844.

Juan Birdwell, originario de los E. U.

Informe el Sr. al Sr. con el mas profundo respeto se presenta pacho pedicuro y expone. auras los necesarios y su vida.

que siendo naturalizado Mexicano y deseando dedicarse a la agricultura

Mi obediencia.

Suplica de V. E. se obigue concederle el terreno conocido con el nombre de Sillae o Ulpino, cuyo parage es baldio. consta de cuatro sitios de terreno mayor segun manifiesta el diseño que obrivamente acompaña y son sus linderos, al N. O. tierra baldia, al N. E. el Estero Ulpino al S. E. el rio del suenamento y al S. O. tierra baldia.

P. L. A. E. se obigue acceder a esta su humilde peticion y mandarse adjudique en Colonizacion el mencionado terreno en lo q. recibire gracia y merced.

Auno lo necesario de. Monterrey 30 de Abril de 1844.

Juan Birdwell.

Sr. Gobernador.

El terreno q. se pretende aunque se informó por el Sr. Sutter que era baldio pero entiendo que podria quedar pendiente esta solicitud lo mismo que los demas de su clase hasta la visita que V. E. tiene acordada la Sup<sup>ta</sup> deservimacion de V. E. dispondra lo que fuere mejor.

sta dem. Monterrey. Abril 30 de 1844.

como informó el Sr. Sr. Manuel Jimeno

Mi obediencia.

Jaime.

habe peticion...

yo adquiri que el terreno que el...

7  
Jusgado del Distrito { yo certifico que el terreno que el  
del rio Sacramento } Sr. Don Juan Bidwell solicitó  
por presente esta ocupado.

Nueva Helvetia. abril 7. de 1844.

J. A. Sutter.

Sumo Sr. Gobernador.

A muchas solicitudes de la naturaleza como la precedente  
están pendientes hasta V. E. pueda tener; la vuelta por el  
rio Sacramento, por lo que se le tubiere S. E. a bien pueda  
quedar pendiente este expediente hasta que no se despachen  
aquellas solicitudes.

Monteney. Julio 26 de 1844.

Manuel Limero.

Monteney. Julio 26 de 1844.

8  
Ocupado provisionalmente hasta que se despache

Michelt<sup>a</sup>.

Monteney. Noviembre de 1844.

9  
Vista la petición con que da principio este expediente  
los informes que preceden con todo lo demás que se tubo  
presente y tener curso de conformidad con las leyes y  
reglamentos de la materia, Declaro a D<sup>n</sup> Juan Bidwell  
mexicano por naturalización, dueño en propiedad del terreno  
conocido con el nombre de los Ulpinos, Colindante al N. O.  
con las tierras baldías, al N. E. con el Estero de Ulpinos  
al S. E. con el Rio del Sacramento y al S. O. con las tierras  
baldías en estension de cuatro sitios de Sanolomayor  
Líbrense el correspondiente despacho para que se ponga en el libro respectivo  
y dirijase este expediente a la Santa Asamblea Departamental  
para su aprobación. El L. S. L. Manuel Micheltrero, Snt.  
de Brigada del Ejército Mexicano, Ayudante J. de la  
Plana mayor del mismo, Gobernador Comand<sup>te</sup> Int<sup>te</sup> del  
Inspeccion del Departamento de las Californias así lo mandó  
decretó y firmó, de que doy fe.

8  
D. C. Manuel Micheltoreau, General de Brigada del  
Ejército Mexicano, Ayudante Jral de la Plaza Mayor  
del mismo, Gobernador Comandte General e Inspector del  
Departamento de las Californias.

86 ND  
PAGE 9

10

Por cunento D. Juan Bidwell, Mexicano por  
naturalizacion ha pretendido para su beneficio personal  
y el de su familia el parage conocido con el nombre de  
Los Ulpinos, colindante al N. O. con las tierras baldias, al  
N. E. con el estero de Ulpinos al S. E. con el Rio del Sacram-  
ento y al S. O. con las tierras baldias: practicadas prevante  
las diligencias y averiguaciones concernientes segun lo dis-  
puesto por leyes y reglamentos; usando de las facultades  
que me son conferidas a nombre de la nacion Mexicana  
he venido en conferirle el tenenio mencionado declarandole  
la propiedad de el por las presentes letras suplicandose  
a la aprobacion de la d. ib. D. y bajo las condiciones sigtes  
1.<sup>a</sup> No pueda venderlo enagenarlo ni hipotecarlo, in-  
poner censo, vinculo, fianza, ni otro gravamen alguno  
ni aun podra ~~disponer~~ de el.

11

2.<sup>a</sup> Poda cercarlo sin perjudicar las haciendas Caminos  
y servidumbres. Lo disfrutara libre y esclusivamente  
destinandolo al uso, o cultivo que mas le acomode; pero  
dentro de un año fabricara casa y estara habitada.

3.<sup>a</sup> Solicitara del Juez respectivo que le de la posesion  
juridica en virtud de este despacho por el cual se  
delinearan los linderos en cuyos limites podra a mas  
de sus mojones algunas arboles frutales o silvestres de  
alguna utilidad.

12

Office of the Surveyor Genl of the United States For California.

Samuel L. King, Surveyor General of the  
United States for the State of California and as such  
now having in my office and under my custody

9

86 ND  
PAGE 10

13

a portion of the Archives of the Former Spanish and Mexican territory a Department of Upper California do hereby Certify that the Eight preceding and seven annexed pages of tracing paper numbered from one to eight inclusive and each of which is signed 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.

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 21<sup>st</sup> day of September 1852.

Samuel D. King.  
Surveyor Genl. Cal.

Filed in Office Feby. 7<sup>th</sup> 1853.

Geo Fisher.  
Secy.

14 folios.





10

Translation

86 ND  
PAGE 11

Fourth class Stamp Two Eights of one dollar  
Provisionally assigned, by the Maritime Customs of the  
Port of Monterey in the Department of the Californias  
for the years one thousand eight hundred and forty four  
and one thousand eight hundred and forty five

Micheltina

Palla de la Guerra

Monterey April  
30 1844

To his Excellency the Governor

Let the Secretary  
of State Report  
just Ascertain  
what is necessary  
keeping in view  
my Contemplated  
Visit to the Upper  
Country

Juan Bidulle native of the United States with  
the most profound respect presents himself  
That having been Naturalized  
a Mexican and desiring to devote himself  
to agriculture he beseeches Your Excellency  
to vouchsafe to grant him the tract known  
by the name of Sillae or Alpino which  
tract is unoccupied It consists of four  
square leagues (sitios) for small cattle as shown  
by the design which he duly annexes and  
its boundaries are the N.W. unoccupied  
lands to the N.E. the Alpino Slough (Estero)

to the S.E. the river Sacramento and to the S.W. unoccupied  
lands Wherefore he prays Your Excellency to vouchsafe  
to accede to this his humble petition and give orders that  
said tract be adjudicated to him in Colonization wherein  
he will receive a grant He makes the necessary verifications

Monterey 30<sup>th</sup> April 1844

Juan Bidulle

To his Excellency the Governor

Although the tract claimed is reputed by Mr. Sutta to be  
unoccupied I understand that this petition can remain in  
suspense in the same way as the others of its class until  
the Visit which Your Excellency has resolved upon The Superior  
Determination of your Excellency will dispose what may  
be best Monterey April 30<sup>th</sup> 1844

Manuel Jimeno

Same date  
Secretary

Let it be done as Reported by the Hon. Sec-  
retary Michelta

Tribunal of the District  
of the River Sacramento

86 ND  
PAGE 12

I Certify that the trace which Mr  
Don Juan Bidau solicits is now unoccupied - A Letter  
To His Excellency the Governor

As many petitions of the same nature as the foregoing are in  
suspense until Your Excellency can make the visit of the  
River Sacramento if therefore Your Excellency deems  
meet these proceedings can remain in suspense until  
those petitions are disposed of Monterey July 26 1844

Manuel Jimeno

Monterey July 26 1844

Let him occupy it provisionally until I go up when I  
will despatch the business Machetta

Monterey November 1844

In view of the Petition whereunto these proceedings origi-  
nate the reports and all other things that were brought  
forward and were proper to be kept in view conformably  
to the Laws and regulations affecting the matter I declare  
Don Juan Bidau a Naturalized Mexican the Abolition  
owner of the trace known by the name of Los Ulpinos  
bounded N.W. by the unoccupied lands N.E. by the Ulpi-  
nos through S.E. by the Sacramento River and S.W. by  
the unoccupied lands containing four ranges (sitios)  
for meat Cattle Let the proper patent be issued be entered  
of record in the proper book and let these minutes of  
proceedings be forwarded to the Most Excellent the Dep-  
artmental Assembly for its approval He is Excellency  
Don Manuel Machetta Brigadier General of the Mexican  
Army and Adjutant General of the Staff of the same  
Governor, General Commandant and Inspector of the  
Department of the Californias has so ordered decreed  
and subscribed which I certify

Filed in Office July 7<sup>th</sup> 1853

Geo Fisher

Secretary

ase 319.  
12 / 11 / 1852 \$2.50

Sello primero de diez pesos.

Habilitado provisionalmente por la Aduana mexicana del puerto de Montecney en el Departamento de las Californias, para los años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

Micheltorena.

Pablo de la Guerra.

86 ND  
PAGE 13

(Seal)

El ciudadano Manuel Michelt<sup>a</sup> General de Brigada del Ejército Mexicano, ayuntamiento Jefe de la Plaza Mayor del mismo, Gobernador Comandante General e Inspector del Departamento de las Californias.

Por cuanto D. Juan Bidwell mejicano por naturalizacion ha pretendido para su beneficio personal y el de su familia el paraje conocido con el nombre de Ulpinos, colindante al N. con tierras baldias al N. E. con el Estero de Ulpinos al S. E. con el Rio del Sacramento y al S. O. con las tierras baldias; practicadas previamente las diligencias y averiguaciones concernientes segun lo dispuesto por leyes y reglamentos; usando de las facultades que me son conferidas a nombre de la Nacion Mexicana he venido en concederle el terreno mencionado declarandole la propiedad de el por las presentes letras, sujetandose a la aprobacion de la Junta Departamental y bajo las condiciones siguientes.

1.<sup>a</sup> No podra venderlo, enajenarlo, imponer censo o vinculo, fianza, hipoteca ni otro gravamen alguno aunque ni aun pueda donarlo.

2.<sup>a</sup> Podra cercarlo sin perjudicar las traversias Caminos y servidumbres, lo disputara libre y esclaramente destinandole lo al uso o cultivo que mas le convenga, pero dentro de un año fabricara casa y estara habitada.

3.<sup>a</sup> Cuando se le confirme la propiedad, solicitara del Jefe respectivo que le dé la posesion juridica en virtud de este despacho, por el cual se demarcanan los lindes en cuyos limites, pondra a mas de las mojones

algunos árboles frutales ó silvestres de alguna utilidad.

1.<sup>o</sup> El terreno de que se hace donacion es de cuatro cuatros de Gavardo Mayor segun explica el acta respectiva. El Juez que otiene la posesion lo hará medir conforme a un censoya quedando el sobrante que resulte a la Nacion para los usos convenientes.

5.<sup>o</sup> Si contraviniere a estas condiciones perderá su derecho al terreno y será don unicial por otro.

In consecuencia cuando que se recibiere de título el presente y teniendose por firme y valedero se tome razon de él en el libro respectivo a que corresponde, y se entregue al interesado para su resguardo y demas fines.

Dado en Montevideo a veinte de Noviembre de mil ochocientos cuarenta y cinco.

Manuel Micheltoarena.

Manuel Jimeno. Sr. = Queola tomada razon de este despacho en el libro respectivo a fojas 12. sta.

Jimeno.

Filed in office. Feby. 3<sup>o</sup> 1853.

Geo. Fisher.

Levy.

14

Translation  
of Grant  
B

First class Stamp Eight Dollars  
Issued provisionally by the Customs of the Port of Monterey  
in the Department of the Californias for the years 1844 & 1845

Mitchellona Pablo de la Guerra

The Citizen Manuel Michetta Brigadier General of the  
Mexican Army Captain General of the Staff of the  
same governor General Commandant and Inspector of  
the Department of the Californias

Whereas John Bidwell a Naturalized Mexican has solicited  
for his own benefit and that of his family the tract known  
by the name of Las Ulpinos bounded at the N.W. by waste  
lands at the N.E. by the Ulpinos Pond at the S.E. by the  
Sacramento River and at the S.W. by the waste lands  
the necessary legal steps and investigations having first  
been duly taken as provided by the Laws and regulations  
by virtue of the faculties conferred on me in the name  
of the Mexican Nation, I have come to grant to him  
the tract aforesaid declaring the same to be his property  
by these presents letters subject to the approval of the  
Hon. Departmental Assembly under the following conditions  
1<sup>st</sup> He shall have no power to ~~sell~~ to alien it to encum-  
-ber it with rent sale, lien, bond mortgage or other incum-  
-brance of any kind nor shall he ever have power to  
donate it

2 He may fence it without prejudice to the crops roads  
highways and rights of way; he shall enjoy it freely and  
exclusively applying it to the use or culture which best  
may suit him but within one year he shall construct a  
house which shall be inhabited

3 After confirmation to him of the title he shall solicit  
from the Judge who has jurisdiction that judicial possession  
be given to him by virtue of this grant, and thereby shall  
be marked out the boundaries in the line of which he shall  
place besides the corner marks some fruit or forest trees  
of some utility

4 The tract hereby conceded is of four (cows) ranges of  
large cattle as set forth by the design relating thereto The

86 ND  
PAGE 15

13

86 ND  
PAGE 16

Judge who may give possession will cause the same to be mea-  
sured according to law the surplus remaining the  
property of the Nation for its own proper use and behoof  
If he should break these conditions he shall lose his right  
to the tract and it may be claimed by others

Whereupon I order that these presents being his title deeds  
be considered firm and valid that they be recorded in the  
proper Book and delivered to the party in interest for  
his security and other uses

Given at Monterey November 20<sup>th</sup> 1824

Manuel Jimeno Secretary      Manuel Michittoma

This grant is Recorded in the proper Book  
pages 12 & Jimeno

Filed in Office Sept 3<sup>d</sup> 1852

Geo Fisher

Seal

16

Opinion of the John Bidwell }  
 Board } Los Alpinos  
 of the United States } Four Square Leagues

86 ND  
 PAGE 17

The claim in this case is founded on a grant made by Governor Micheltorena to the Petitioner on the 20<sup>th</sup> day of November AD 1844. The signature of the Governor is proved to be in his hand writing there is no proof that any approval was ever made by the Departmental Assembly and no proof that any judicial Maximatum was ever made. The petitioner has placed on file the deposition of Samuel J. Hensley who testifies in regard to the occupation and habitation of the land in question as follows "I am acquainted with the land called Alpinos mentioned in said grant. It is situated on the west bank of the Sacramento River ten or twelve miles above its junction with the San Joaquin. In the fall of 1844 I took Mr Bidwell on board of a Schooner to the land with some hands to make a settlement. They remained there and built an Adobe House in which an Englishman who had charge of building remained during the winter. The next season a small parcel of the land was cultivated and in the winter of 1845 the house was occupied by P B Reading and hands: there has ever since been persons living on the place claiming under said Bidwell. There are now several dwelling houses on the land some three hundred acres are enclosed by fences and occupied with Cattle, horses, and hogs." The foregoing abstract from the deposition of Hensley embraces all the evidence adduced by the petitioner in regard to the performance of the Conditions annexed to his grant. It would appear from this deposition that the petitioner proceeded to construct a house on the place called Alpinos either before or immediately after he had received his grant. The House at all events was constructed during the fall of 1844 and was occupied during the following winter by an Englishman who it seems had charge

17

86 ND  
PAGE 18

of its construction. In the winter of 1845 - C. J. B. Keating occupied the same house, but it does not appear that the grantee ever occupied the premises in person. The only time he is shown to have been on the premises was when he was taken there on the Schooner Commanded by the Lieut. with the hands which he had employed to build his house. It is clear that the party has failed to establish by proof such a personal habitation of the land as the law required of those persons who sought grants of the public domain for the purposes of inhabitation or in other words for the purpose of raising and grazing cattle. The inquiry may here be made for which of the two purposes for which grants of the public lands were authorized to be made by the law of 1824 and the regulations of 1828 were the lands in question sought by the petitioner. By referring to the petition which the Claimant addressed to Governor Micheltorina on the 30<sup>th</sup> of April AD 1844 it will be seen that he asked for a grant of four square leagues of land for agricultural purposes the object for which he sought the grant is expressed in the following words "That having been Naturalized a Mexican and desirous to devote himself to agriculture he beseeches &c" The language here used I think sufficiently designates the purpose to which he intended to devote the land if his petition should be conceded, besides the quantity asked for corresponds with the quantity which one person was authorized to receive according to the provisions of the 12<sup>th</sup> Sec of the Colonization Law of 1824 for agricultural purposes. In cases where lands were granted for the purpose of Cultivation, and Cultivation followed within the prescribed time in my judgment the Object and Policy of the Mexican Colonization Law was fully carried out and satisfied notwithstanding the Cultivation was not accompanied with actual residence or with any residence at all on the land either by the party or by other for him and notwithstanding the grant had the



18

86 ND  
PAGE 19

usual custom of building and inhabiting a house within one year annexed to it. The reason of this construction of the Mexican Law is to be found in the policy which that Government had in view at the time of the enactment of the Law; instead of adopting the land system of the United States and allowing the Citizen to purchase from his government by paying a stipulated price they adopted a plan which at that time was no doubt much better suited to the habits and pursuits of the people. The cultivation of the soil in California by the Natives hardly ever extended beyond a kitchen garden or a very limited sowing of small grain; grazing was their occupation they were emphatically a pastoral people and for this purpose a great extent of security was deemed essential. If they had been required to purchase from the Government the large extent of Country which they receive under their system of granting I apprehend but few titles would ever have been derived from that source; The Law of 1824 seems to have been framed with an eye to the geographical and physical qualities of California. It is provided by the 12 Sec already referred to that the land shall be parcelled out in quantities suitable for the purposes for which it is susceptible of being devoted. First it is provided that one person shall not receive more than one square league of land susceptible of irrigation. Secondly it is provided that no person shall receive more than four square leagues of land dependent on the rains, and thirdly it is provided that six square leagues may be granted to one person for pasture lands: the capacity of the different portions of California for the purposes here referred to is well considered and the precise quantity allowed to each purpose is the result of a thorough knowledge of the Country and at the same time indicates the true policy which the government had in view. It could not be possible

that the Mexican Statesmen were ignorant of the importance in a national point of view of the Cultivation of the soil. With the history of the world open before them they would have been blind indeed not to have seen that their very existence as a Nation depended in a great measure upon the Cultivation of the rich lands and a change in the pursuits of the people from that of an indolent pastoral life to the more active and remunerating occupation the Cultivation of the most productive soil the land has ever seen. For the purpose then of gradually withdrawing them from a pursuit which occupied almost <sup>the</sup> entire population and implanting a desire for agriculture the promise is held out and an opportunity is afforded to all those who are willing to comply with the conditions to make themselves the owner in fee of several miles of land no money is required but a consideration of equal and more value to the nation is demanded which is that the recipient of the favor shall to some extent cultivate and improve the tract of land the title to which is declared to be in him and his children forever there was nothing onerous or oppressive in the conditions it was a consideration within the means of all and those who did not comply with it did not earn the land and had no claim in law or under the most enlarged and liberal view of the administration of Equity that was ever given upon their government for a title of any description every grant issued by the lawful authorities of Mexico contained a contract the parties to which were the government and its grantee. The government in consideration of the performance of certain acts by the grantee agreed to vest in him and his heirs the title to a portion of the public Domain, the grantee on his part acceded to the liberal proposition thus made and agreed to perform his part of the contract. It was the practice when a grant was made with the conditions annexed to have it read to the grantee and if he acceded he manifested his assent and took the

20

86 ND  
PAGE 21

grant with all its conditions. If the government failed or refused to comply with the terms of the agreement the grantee had in equity and justice a fair claim upon the government. It may be asked in what case this equitable claim consist? the answer is plain, in the performance of his part of the contract. In what position would a party appear in a Court of Equity asking for a specific performance of a contract when by his own showing it would appear that he had not even attempted to perform his part of the agreement. The rule is that he who asks equity must first show that he has done equity otherwise he can have no standing in a Court of Chancery. A more preposterous proposition could not be advanced than that a holder of an imperfect title obtained under the Mexican Colonization laws had a claim upon that government for a complete legal title without first showing a performance of those acts by which alone the conscience of the government could be affected and from which a moral obligation could result that would be binding upon the government to perfect the inchoate title so presented. The treaty protects private property; this Commission was instituted for the purpose of ascertaining what was private and what public property. The law of 1824 and the regulations of 1828 contain the rules under which the public lands belonging to the Nation could be reduced to private property. To these rules then must we look as the only means within our power for ascertaining the kind of property protected by the treaty and by which it can be separated from the other property of a like character which was not so protected. The acts necessary to be performed in order to bring any portion of that which was once public property within the protection provided by the treaty have been so distinctly laid down by this Commission in cases heretofore decided that I deem it unnecessary to recapitulate. In the case before us the testimony shows that

within a year from the date of the grant "a small parcel of the Land was cultivated" the extent of the portion cultivated is not stated but I think that the two facts of having built a house within a year and of having commenced cultivating within a year show a substantial compliance with the terms and conditions of the grant. An actual residence upon lands not susceptible of cultivation and not sought for that purpose was an indispensable condition of the law but as cultivation was the great desideratum of the government it was not deemed material whether it was accompanied with actual occupancy or not the great object which the government had in view having been achieved.

The remaining and by far the most difficult question in this case is the locality and identification of the land granted. The land is described in the grant in the following words "The tract known by the name of Las Alpinos bounded at the N.W. by waste lands at the N.E. by Alpinos pond at the South East by the Sacramento River and at the South West by the waste lands"

The fourth condition attached to the grant refers to the tract as follows "The tract hereby conceded is of four (cows) ranges of large cattle as set forth by the design relating thereto the judge who may give the possession will cause the same to be measured according to law the surplus remaining the property of the Nation for its own proper use and behoof" The foregoing embraces all the description of the lands granted except the description given in the petition which the party addressed to the Governor of which the description given in the grant is a precise copy, the map referred to in the 4<sup>th</sup> condition is more definite than the grant the natural objects referred to in the grant are both represented on the map the Alpinos pond is then represented as lying on the N.E. side of the tract and the Sacramento river is represented as washing the South East side there are the only natural objects represented on

22

86 ND  
PAGE 23

the Map as boundaries. The Map represents a point where the Ulpino pond connects with the Sacramento river. The shape of the trace claimed is also designated on the Map and is represented as lying on the west bank of the Sacramento river. A scale of 15000 Varas is made a part of the Map and by applying this scale to the Map and measuring from the point where the pond connects with the river in a southerly direction to the extreme end of the trace as there represented it will be found that it extends in length about 20,000 Varas and by applying the scale to the breadth it will be ascertained that the trace will average about one league in breadth the exterior line which separates it from the unoccupied lands running at that distance from and parallel with the river until it reaches a point on the Ulpino pond or Slough about the distance of 5000 Varas from the point of beginning which is the junction of the pond and river. The trace as marked out and designated on the Map evidently is intended to embrace the four square leagues mentioned in the grant and is intended to be four leagues in length and one in width. Without the aid of the Map and the scale of distances which by reference is made part of the grant there would be no means of separating the four leagues granted from the other lands by which they are bounded. Notwithstanding there is no juridical measurement and notwithstanding a Subroto is provided for, I am clearly of opinion that the trace granted is sufficiently described so that a Surveyor could identify and locate it with certainty and precision, the quantity described on the Map corresponds with the grant and it is susceptible of demonstration that the limits as delineated on the Map do not embrace more than four leagues that is they are about four leagues in length and one in breadth. The Surveyor by considering the scale as representing 15000 Varas in length and applying

to the map if the land is correctly located and the location on the map is supported by the testimony of the witness. He only will have no difficulty in ascertaining the precise land granted starting from the junction referred to and measuring in the manner above indicated the four leagues granted can be ascertained by exact measurement and no surplus can result. Although this grant cannot strictly speaking be considered as made by metes and bounds because *unsurveyed public lands* cannot be considered as a boundary until the trace which they are intended to bound is surveyed or some natural objects are referred to as in the case before us. When natural objects bound two sides and the length is ascertainable sufficient width may be taken in order to make up the quantity called for we are for the reasons above stated of opinion that the claim in this case should be confirmed.

Filed in Office Jan 17 1854  
Geo Fisher Secy

Decree of  
Confirmation

John Bidwell  
Yes  
The United States



In this case on hearing the proofs and allegations it is adjudged by the Commission that the claim of the said Petitioner is valid and it is therefore decreed that the same be confirmed. The lands of which Confirmation are hereby made are known by the name of "Los Ulpinos" and bounded and described as follows to wit Commencing at a point on the West bank of the Sacramento river where the "Ulpinos Run" connects with said river and measuring along said river in a Southwesterly course the distance of twenty thousand Varas thence running North the distance of five thousand Varas thence running parallel with the said Sacramento river and at an equal distance from the same

24

to a point on the said Alpino pond thence to the place  
of beginning containing in all four square leagues  
reference for further description to be had to the map  
which is a part of document marked C and which  
is filed in evidence in the cause

86 ND  
PAGE 25

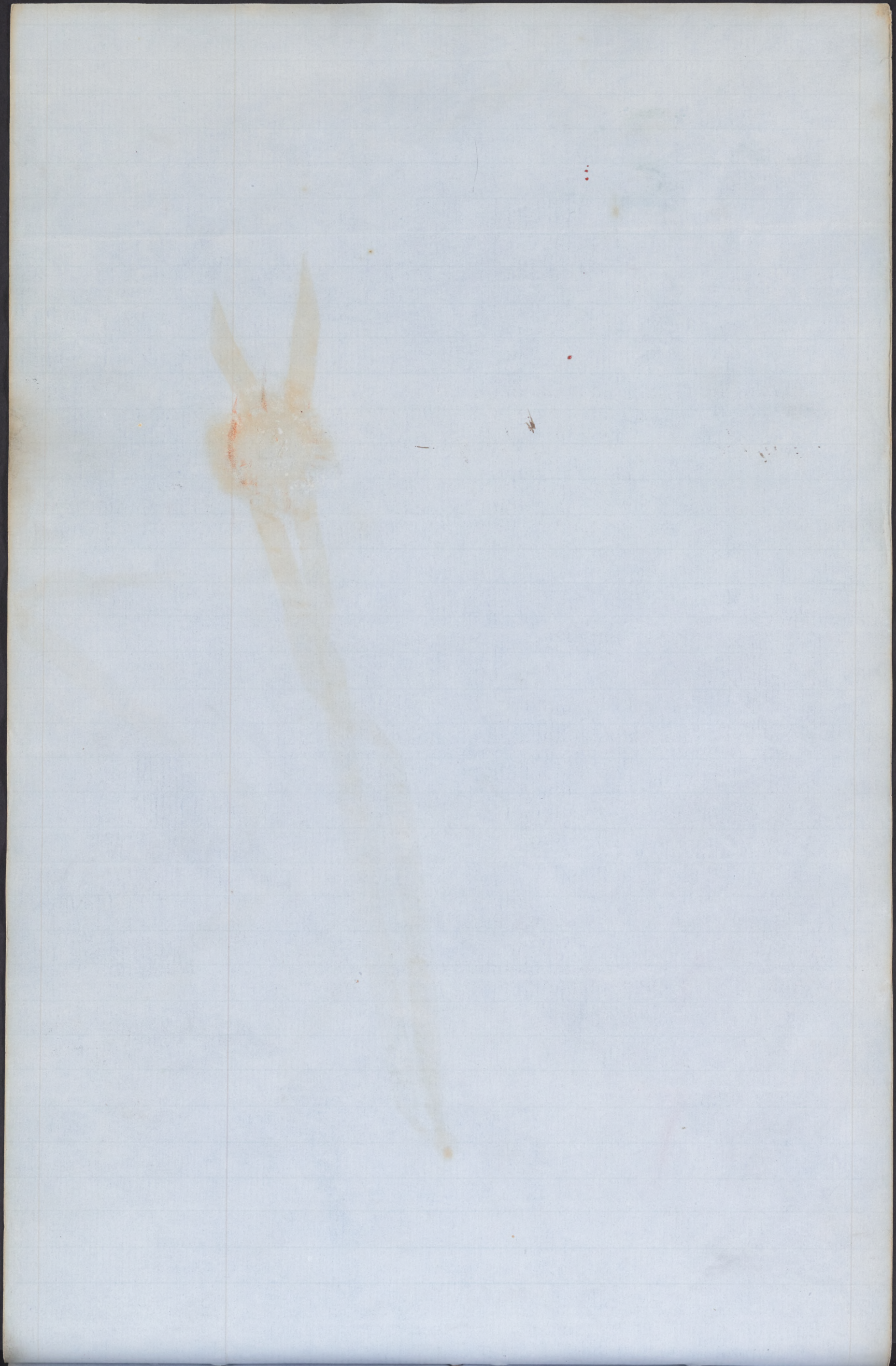
Alpheus Fitch	3	
Thompson Leampole	3	Leampole
A Aug Thompson	3	

Filed in office Jan 17 1884

Geo Fitch

Secy

1884





● Office of the Board of Commissioners,

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

86 ND  
PAGE 26

I, *George Fisher* Secretary to  
the Board of Commissioners to ascertain and settle the Private  
Land Claims in the State of California, do hereby certify the  
foregoing *Twenty-four* pages, numbered from  
1 to *24*, both inclusive, to contain a true, correct and full Tran-  
script of the Record of the Proceedings and of the Decision of the  
said Board, of the Documentary Evidence and of the Testimony  
of the Witnesses, upon which the same is founded, on file in this  
Office, in Case No. *319* on the Docket of the said Board,  
wherein *John Bidwell* is \_\_\_\_\_

the Claimant against the United States, for the place known by  
the name of "*Los Alpinos*" \_\_\_\_\_

In Testimony Whereof, I hereunto set my hand  
and affix my private Seal (not having a Seal  
of Office) at San Francisco, California, this  
\_\_\_\_\_ *twelfth* day of September  
A. D. 185*4*, and of the Independence of the  
United States of America the seventy=*ninth*.

*Geo. Fisher.*



86 ND

U. S. DISTRICT COURT,  
Northern District of California.

No. 86

THE UNITED STATES

vs.

John Bidwell

TRANSCRIPT OF THE RECORD

FROM THE  
BOARD OF U. S. LAND COMMISSIONERS,

In Case No. 319

Filed, Sept 13 1854

John A. Monroe  
Clerk

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

The United States  
Appellants

vs

No. 86.

John Bidwell - Appellee

The Petition of the United States by their  
Attorney represents; that this cause is an  
Application for a review of the decision  
of the Board of Commissioners whereby  
the Claims of the said Appellee was  
Confirmed as appears by reference to  
the records in the Case:

That a transcript of the said Records  
was filed in this Court on the  
day of \_\_\_\_\_; that a notice of  
Appeal was filed on the \_\_\_\_\_ day of \_\_\_\_\_  
and that the land claimed  
lies in the said District.

That the said Claim is invalid.  
Wherefore Appellants pray that the  
said decision of the Board be reversed  
& that this Court decree the said title  
to be invalid. Respectfully,

Allassell  
Asst. U.S. Atty

No. 86.

U. S. District Court  
Northern Dist of California

The United States  
Appellants

vs

John Bidwell.  
Appellee

Petitioner

Filed July 16, 1855,

by Cheever,  
Deputy.

86 ND  
PAGE 28

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

86 ND  
PAGE 29

No. 86,  
The United States  
vs  
John Bidwell  
Appellants  
Appellee  
Answer -

The respondent for answer to the  
petition filed in this case answers and says. It is  
true that the land mentioned in said petition and in  
said transcript of the proceedings before the said Board  
of Commissioners lies within said Northern District  
of California and within the jurisdiction of this  
Court.

But this respondent denies that his title to  
the said lands is invalid, and avers that the same  
is valid, and prays that the decision of the said  
Board be affirmed, and his title be decreed to  
be valid -

John Bidwell  
by his Attorney E. Crosby

No. 86.

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

The United States

vs

John Bidwell

Answer,

Filed July 20, 1853,  
by Chevers  
Deputy.

86 ND  
PAGE 30

E. O. Crosby  
Atty for Bidwell

District Court of the United States  
Northern District of California.

The United States } "Los Albinos"  
v } Decree No. 86.  
John Bidwell } Stated Term, October 29, 1855.

On appeal from the final  
Decision of the Board of Commissioners to  
ascertain and settle private land claims in  
the State of California.

This cause came on at the stated term  
of the Court, on appeal from the final Decision  
of the Board of Commissioners, to ascertain and  
settle the private land claims in the State  
of California, under an Act of Congress,  
approved on the third day of March 1851, upon  
the Transcript of the proceedings and Decision  
of the said board of Commissioners, and the papers  
and evidence on which the said Decision was  
founded, and it appearing to the Court, that  
the said Transcript has been duly filed according  
to Law, and Counsel for the respective parties  
having been heard, it is by the Court, hereby  
ordered, adjudged and decreed, that the said  
Decision be, and the same is, hereby affirmed.  
And it is likewise further ordered, adjudged  
and decreed, that the claim of the Appellee  
is a good and valid claim, and that the said

claim be confirmed, to the extent and quantity, of Four Square Leguas or sitios de ganado Mayor, of Land, and no more.

The tract of Land, whereof confirmation is made, is bounded on the North East, by the Estero de Ulpino, and on the South East, by the river Sacramento; being the same tract, the precise location and boundaries whereof, are delineated on the Deseño which accompanies the expediente, and according to which, the original grant was issued, and this Decree of Confirmation, is hereby made.

Given at the City of Mexico  
this 11th day of June 1825  
J. S. de la Cruz  
Judge



United District Court  
Northern District of  
California — No. 86 —

The United States  
vs } Greco  
John Bidwell

Filed October 29, 1855,  
W. A. Church,  
Deputy.

86 ND  
PAGE 33

California Land Claims

Attorney General's Office

10 January 1857.

Sir:

In the case of the claim of John  
Bidwell, confirmed to the claimant  
by the Commissioner, case no. three hundred  
and nineteen, (319), appeal will not  
be prosecuted by the United States.

I am,

Respectfully,

Assistant

Wm Blanding Esq

U. S. Attorney,

San Francisco.

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

The United States

v

} D.C. 86 : L.C. 319.

John Bidwell

In pursuance of notice from  
the Attorney General of the United States, here-  
unto annexed, it is hereby stipulated and agreed  
that no further appeal shall be taken in this  
case on the part of the United States, and  
that the claimant have leave to proceed  
under the decree of this Court heretofore ren-  
dered in his favor, as under Final Decree

San Francisco March 6<sup>th</sup> 1857

Wm Blanning  
Dist Atty

E. Crosby. Attorney for  
appellee

86  
S.C. 319

The United States

of

John Bidwell

—  
Stipulation  
—

Filed March 21, 1857,  
W. A. Chivers  
Deputy.

86 ND  
PAGE 36

86 ND  
PAGE 37

At a Stated Term of the District Court of the UNITED STATES OF AMERICA, for the Northern District of California, held at the Court Room, in the City of SAN FRANCISCO, on *Saturday* the *21st* day of *March* in the year of our Lord one thousand eight hundred and fifty-seven.

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States

v

John Bidwell

D. C. 86: L. C. 319.

In pursuance of a stipulation entered into by the U. S. Attorney, in accordance with a notice from the Attorney General of the United States, that no further appeal be taken in this case: —

On motion of the District Attorney it is ordered, adjudged and decreed that claimant have leave to proceed under the decree of this Court heretofore rendered in his favor, as under Final Decree.

Ogden Hoffman  
U. S. District Judge

86

United States District Court, Northern  
District of California.

*The United States*

vs.

*John Bidwell*

ORDER.

*Vacating appeal,*

Filed *March 21,* 1857

*John A. Murre,*

CLERK.

By *W. H. Chevers*

DEPUTY.

86 ND

PAGE 38

No. 86.

United States District Court for the  
Northern District of California

86 ND  
PAGE 39

The United States }  
vs } Index to Transcript.  
John Bidwell }

Translation of Spanish Documents,

- Page. 10. Petition of John Bidwell to Gov. Micheltorano Soliciting Grant.  
Date April 30. 1844. — Marginal Decree of Gov. referring  
it to Secretary of State. Same date. — Report of Imeno. — do
- Page. 11. Report of John A. Sutter, that land is vacant.  
Further Report of Imeno. Date July 26. 1844. — & Same date  
Decree of Gov. Micheltorano granting right of Occupation —
- Page. 7. Map of land attached to Spanish Documents
- Page. 14. Micheltorano to John Bidwell — Grant in full property  
with usual conditions Date Nov. 20. 1844.

Proofs.

- Page. 3. Deposition of Saml. J. Hensley. Proves Signatures to the  
original papers — location & occupation of land.
- Page. 16. Opinion of Commissioners Concerning the Claim.
- Page. 23. Decree of Commissioners

E. O. Crosby Atty  
for Bidwell

No. 86.

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

The United States  
Appellants  
vs

John Bidwell  
Appellee

Index to Transcript

86 ND  
PAGE 40

Submitted Sept 3<sup>d</sup> 1855.

Entered by Atty  
for Bidwell



The United States  
Appellants  
vs  
John Bidwell  
Appellee

On 30. April 1844 the appellee solicited for agricultural purposes, the land subsequently granted to him by Gov. Micheltoreno on the 20. Nov. 1844. The genuineness of the grant the origin of which was before the Commission, was proven. There was no evidence to establish that judicial possession was obtained, at the approval of the Departmental assembly ~~at~~ <sup>given</sup> ~~by~~, but under the circumstances of this case, the absence of such testimony cannot invalidate the claim. The question which occupied mostly the attention of the Commission, was, whether, there had been a substantial compliance by the grantee with the policy of the Colonization laws of Mexico and the conditions of the grant. An elaborate investigation of this question is given, and this Court concurs in the conclusion at which they <sup>Commissioners</sup> arrived.

that there has been established  
by the testimony in this case  
such compliance. There was  
no personal occupancy of the  
premises by the grantee, but the  
evidence shows, that shortly after  
the issuing of the grant, the grantee  
went on the land with some hands  
to make a settlement. That they  
remained there and built a house  
in which the person placed in  
charge resided. That the sowing  
season ~~the~~ a portion of the land  
was planted, and that persons  
have continued on the land claim-  
ing under the grantee, and  
that there are at this time  
several dwelling houses on the  
land some three hundred acres  
under fence, with cattle & stock.

~~The~~ The Court considers, par-  
ticularly in view of the ~~papers~~  
petition of the grantee for the  
land for agricultural purposes,  
that the settlement and culti-  
vation of the land by the  
grantee without personal or  
residence on it is sufficient  
to show a performance on  
his part of the conditions

of the grant, & compliance  
with the Colonization laws &  
regulations. The decision of the  
Commissioners therefore in favor of  
the validity of this claim must  
be affirmed.

Office of the Board of Commissioners,

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

San Francisco, Sept. 13<sup>th</sup> 1854

J. A. Maurer, Esq.  
Clerk of the U. S. District Court for the  
Northern District of California.

Sir;

I herewith transmit you, pursuant to the requirements of the Act of Congress, approved August 31st, 1852, a Transcript of the Record of the Proceedings and of the Decision of this Board, of the Documentary Evidence and of the Testimony of the witnesses upon which the same is founded, in Case No. 319 on the Docket of the said Board, wherein John Bianchi is the Claimant against the United States, for the place known by the name of "Los Alpinos," and request your receipt for the same.

I am, Respectfully,

Your O<sup>b</sup>t Servant,

Geo. Fisher