

CASE NO.

107

NORTHERN DISTRICT

LOS MEGANOS GRANT

JOHN MARSH

CLAIMANT

LANDMCASE 107 ND

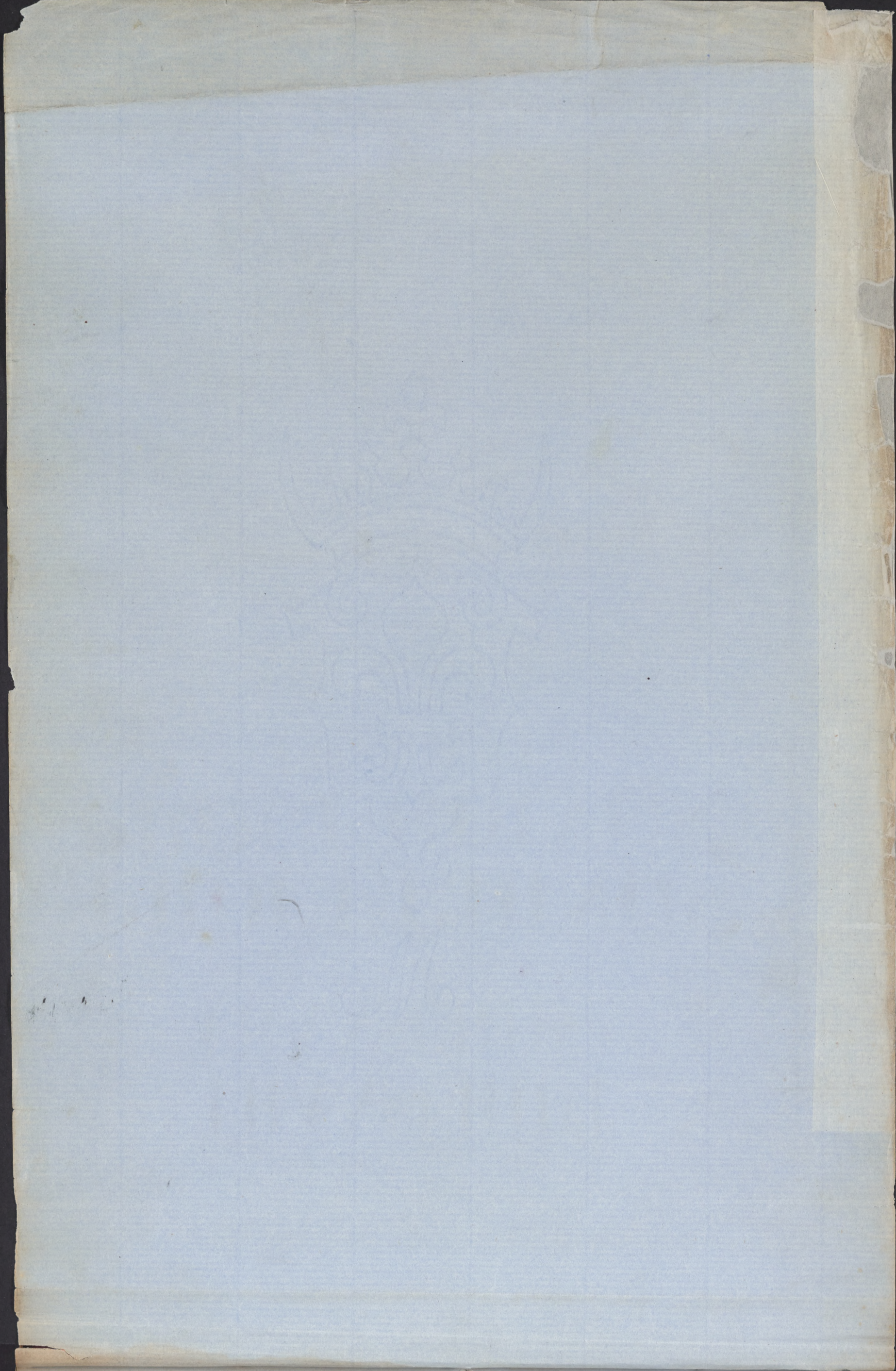
136 pages

OCT 18 1962

BY CONSENT OF
MICHAEL DOND
Engineer

213

Northern District



TRANSCRIPT

OF THE

107 ND
PAGE 1

PROCEEDINGS

IN CASE

NO. 213

John Marsh

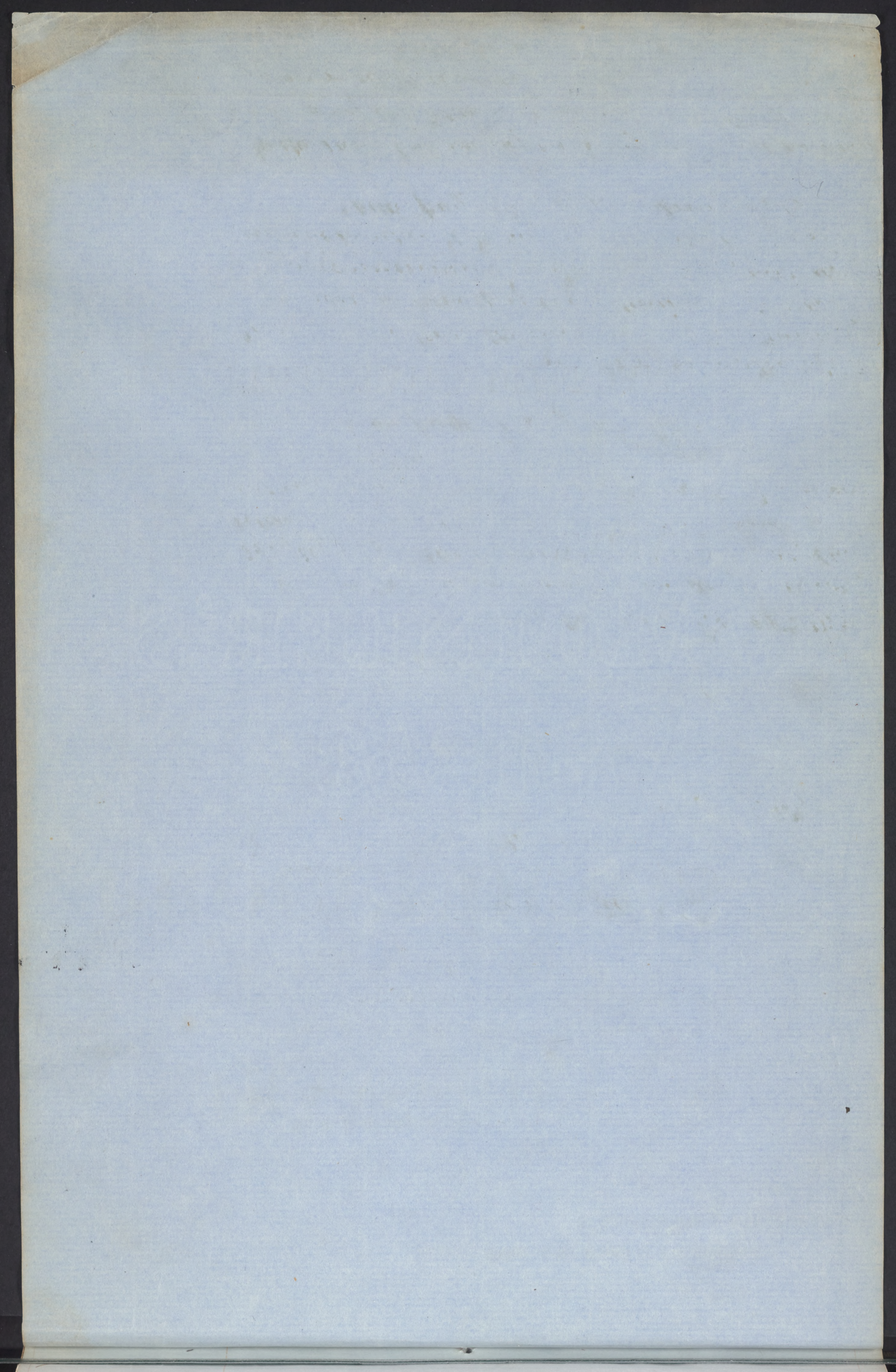
CLAIMANT

VS.

THE UNITED STATES, DEFENDANT,

FOR THE PLACE NAMED

"Los Negros."



Office of the Board of Commissioners,

To ascertain and settle the Private Land Claims

IN THE STATE OF CALIFORNIA.

Be it Remembered, that on this May 3,
Anno Domini One Thousand Eight Hundred and Fifty-2, 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;

107 ND
PAGE 2

The Petition of John Marsh
for the Place named
"Los Meganos"
was presented, and ordered to be filed and docketed with No. 213, and
is as follows, to wit;

(Vide page 4 of this Transcript.)

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

San Francisco Feb. 25th 1853.

In Case no. 213, John Marsh for the place named
"Los Meganos," the deposition of John Marsh, the
claimant in this Case, in his own behalf,
taken before Commissioner Mary J. Thurston,
was filed;

(Vide page 6 of this Transcript.)

San Francisco Feb. 26th 1853.

In the same Case the deposition of Jose Noriega,
a witness in behalf of the claimant, taken
before Commissioner Melana Hall, with doc-
ument marked H. H. no. 1 annexed thereto was filed;

(Vide page 8 of this Transcript.)

In the same Case the deposition of E. Travel, a witness
in behalf of the claimant, taken before Commissioner
Melana Hall was filed;

(Vide page 7 of this Transcript.)

San Francisco, Sept. 29th 1853.

In the same case the deposition of Thomas E. Eversted, a witness in behalf of the claimant, taken before Commissioner Alpheus Felch was filed:

(Vide page 9 of this Transcript)

In the same case the deposition of W^m E. P. Hattwell, a witness in behalf of the claimant, taken before Commissioner Alpheus Felch was filed:

(Vide page 11 of this Transcript)

A-107 ND
PAGE 3

San Francisco Oct. 24th 1853.

In the same case the deposition of James W. Forbes, a witness in behalf of the claimant, taken before Commissioner Alpheus Felch was filed:

(Vide page 12 of this Transcript)

In the same case the Deposition of J. C. Whitcher a witness in behalf of the claimant, taken before Commissioner Alpheus Felch, with a map marked Exhibit no. 1. A. F. and document marked no. 2 A. F., was filed:

(Vide page 15 of this Transcript)

San Francisco Dec. 6th 1853.

In the same case the counsel for the claimant read the papers in evidence, and opened the argument - continued for further argument.

San Francisco Dec. 20th 1853.

In the same case argument by the counsel for the claimant resumed & concluded - case submitted and taken under advisement.

3

San Francisco March 14th 1854,
In the same case Commissioner Alpheus Felch
delivered the opinion of the Board rejecting the
claim;

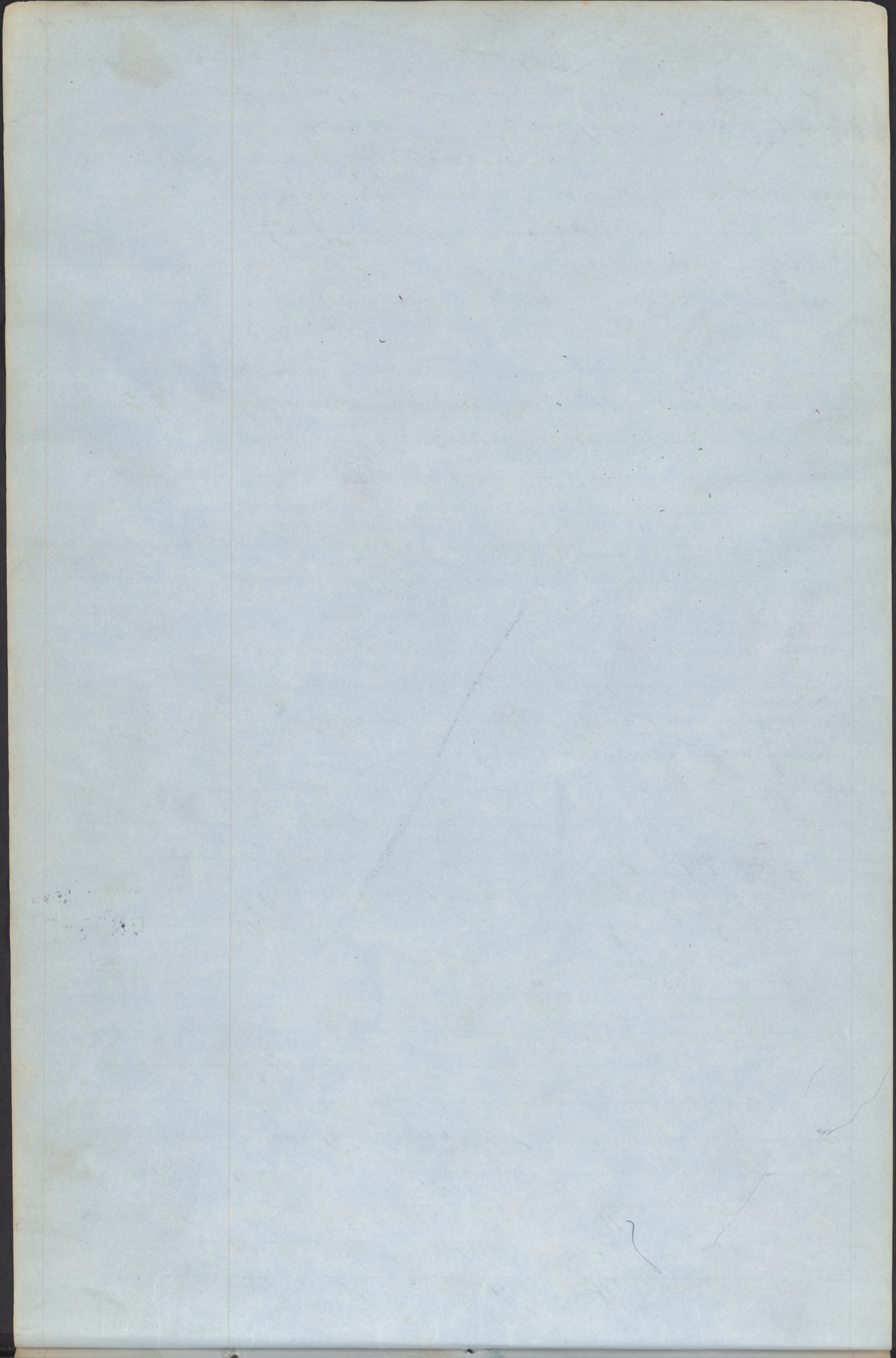
(Vide page 63 of this Transcript.)

San Francisco Aug. 15th 1854,
In the same case, ^{on} the motion of the United
States Law Agent, the following order was
made, to wit:

(Vide page 72 of this Transcript.)

107 ND

PAGE 4



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

Petition.

Your petitioner, John Marsh of the County of Contra Costa & State of California, respectfully represents to your Honorable Board that he claims a certain tract of land, called, known & distinguished as the Rancho Los Meganos, containing four leagues from south to north & three leagues from East to West, situated in the County of Contra Costa in said State of California, that he claims the same in fee by virtue of a grant made to Jose Nunez of the city of San Jose & County of Santa Clara & State of California, under the authority of the Mexican Government by Jose Castro, Superior Political Chief administrator of Alta California, & as such authorized to make the concession, bearing date the thirtieth day of October A.D. 1835, & approved by the Intendant Deputacion on the fifteenth day of October A.D. 1835; & that by the force & effect of said grant & the customs & usage of the then government the said grantee was fully authorized to take possession of said land, which in fact he did, as far as the Indian hostilities allowed that from the date of said grant for several years thereafter no juridical or actual possession could be obtained because of the Indian disturbances, & the Government failed to subdue said Indians, & that possession was taken as soon as practicable, & the said grantee being in said possession in the month of December A.D. 1838.

Your petitioner would further represent that the said grantee did, in the month of December A.D. 1838, sell, convey & deliver possession of said land for a good & valid consideration to John Marsh your petitioner aforesaid.

Your petitioner would further represent that the said grantee did, on the twenty seventh day of March A.D. 1852 by the deed of himself and

5

2/213

Mmanuel Fernandez his wife, of that date, duly executed, acknowledged & recorded, ratify & confirm the ~~same~~ sale & transfer aforesaid, & did convey & confirm to your petitioner all their right, title & interest in said land.

Your petitioner would further represent, that at the time of the grant to said Noriega, & subsequently at the time of the conveyance to your petitioner by said Noriega, & for several years thereafter, the aforesaid tract of land was thirty miles beyond the inhabited frontier, in the midst of a wilderness & adjoined to no land owned by an individual or a Mission.

Your petitioner would further represent, that he has uninterruptedly resided upon & been in the quiet & peaceable & undisputed possession of said tract of land for more than thirteen years, to wit; ever since said first sale & conveyance to him by said Jose Noriega; & that he has no knowledge of any interfering claim.

Your petitioner presents herewith the original grant of said land in the Spanish language, together with a translation of the same, & also the deed of Jose Noriega & wife, & will make further proof of title, if required by the Board.

Your petitioner prays your Honorable Board to take into consideration his claim to said tract of land & decree his title to be valid, & confirm the same.

And your petitioner, as in duty bound will ever pray.

John March, by
S. P. Webb. his Attorney,
San Francisco May 3^d 1852.

Filed in Office May 4th 1852.
Geo. Fisher.
Secy.

107 ND
PAGE 6

6

No 213. San Francisco, Feby 25 1853.

On this day before Comr H. S. Thornton, came John Marsh the claimant in this case No 213. who after being duly sworn testified & says, as follows, the Associate Law Agent of the U. S. being present.

Deposition of
John Marsh.

I John Marsh of the County of Contra Costa in the State of California depose & say that I am fifty three years of age, that I have resided in this State of California since the 1st day of January 1836. I purchased the rancho Los Negros of San Jose in the latter part of 1837 & I removed on to it in April 1838. When I purchased the estate the said San Jose gave to me the original title paper, which had been given to him by Jose Castro of the said rancho in the year 1835. These papers with all my other valuable deeds, papers & documents were stolen from my house on said rancho about the first of September A. D. 1838. I was absent from my house on a journey to San Jose, leaving my house & farm in the care of two Mission Indians who were steady trustworthy persons. On my return and before I reached my house I met my two Indians flying from my place, they were in great distress and informed me of the robbery of my house by a band of robbers & that the robbers had also stolen a number of my horses & had fled. On reaching my house I found that the story of my Indians was verified by the appearance of the house & the entire destruction of all my deeds, papers & documents & the destruction or carrying away of all my other property in the house. I found a great many fragments of the paper torn & defaced so as to be entirely worthless. I could not repair them so as to make them intelligible. The said original title paper from Castro to San Jose, San Jose's deed of said rancho to me my Diploma from Harvard College & all my other papers & documents,

were destroyed at that time. I further say that I followed on the trail of the robbers until I found where they had encamped for the night about 8 miles from my house by a spring of water - it was there where I found the fragments of the papers & torn clothing. It was there, as I judged from the appearance, the robbers had divided the plunder.

John Marsh

Sworn to & subscribed before me this 25 of Feby 1853.

Henry S. Thornton

Course

107 ND
PAGE 8

Filed in Office Feby 25 1853

Geo. Fisher,
Sey.

Deposition of
E. Fravel.

San Francisco Feby 26 1853

On this day before Court Hilland Hall, came E. Fravel, a witness in behalf of the claimant John Marsh petition No 213. & was duly sworn, his evidence being given in English.

The U.S. Associate San Agent was present.

In answer to inquiries by counsel for the claimant the witness testified as follows.

My name is Ephraim Fravel, my age is forty seven years, & I live in the town of San Jose.

I have known the place called Los Mesones, for about fourteen years. It is situated in the county of Contra Costa in the river San Joaquin. Doct John Marsh was in possession of the ranch when I first knew it. He had a house on the place in which

he lived & he had a corral & a garden & had cattle & horses.
He has continued to occupy the place from that time to
the present.

Ephraim Frawel.

Sworn & subscribed

Before me

Heiland Hall. Comr

Filed in Office Feby 26 1853.

Geo: Fisher.
Clerk.

107 ND
PAGE 9

San Francisco, Feby 26 1853.

Deposition of
Jose Noriega.

On this day before Comr Heiland Hall, came Jose
Noriega a witness produced in behalf of the claimant
John Marsh, petition No 213. & was duly sworn, his
evidence being interrupted by the recy.

The U.S. Associate Law Agent was present.

In answer to inquiries by counsel for the claimant
the witness testified as follows.

My name is Jose Noriega, my age is forty five
three years & I reside in the town of San Jose.

I applied to the Governor of California for a
tract of land called Los Negros on the river San
Joaquin near its junction with the Sacramento & obtained
a grant for the same in the year 1835. I was living on
the land & occupying it with a stock of cattle when the grant
was made & I continued occupying it until he sold John
Marsh towards the end of the year 1837.

When I sold the land to ^{Doctor} ~~Doctor~~ Marsh I delivered
over to him the title papers of the land. ^{Doctor} ~~Doctor~~ Marsh

has occupied the land from that time to the present. In consequence of the loss by Doctor Marsh of his title papers I gave him a new conveyance of the land dated the 27th day of March 1852 which is here shown and which is hereto attached & marked H. H. No. 1.

In answer to inquiries by the Associate Law Agent the witness says that he never obtained juridical possession of the land, for the reason that in consequence of the hostility of the wild Indians it could not be done without the aid of a military force.

Sworn & subscribed
Before me
Wiland Hall.

José Noneya

Filed in Office Feby 26th 1853.

Comr.
Geo. Fisher
Sdy.

Deposition of
Thos. E. Crooked.

Office of Board of U. S.
Commissioners L. & L.

This day before Comr. Alpheus Felch, came Thomas E. Crooked, a witness in behalf of claimant John Marsh, No 213, who after being duly sworn deposed as follows.

Questions by Genl James Wilson, Attorney for claimant.

- 1 Question. What are your name, age & place of residence.
Answer. My name is Thomas E. Crooked, my age twenty nine years, & I reside in San Francisco in the State of California.
- 2 Question. Are you a clerk in the office of the Surveyor

General of the United States for California & of whom you charge of the archives of the former government of Col. Arista now deposited in that office.

Answer. I am clerk in the office of said Surveyor General & as his Deputy have charge of the archives of the former Spanish & Mexican government in this state.

3 Question. Is the paper or document which you now present here marked on the outside page "Expediente sobre el paraje nombrado Los Negueros, solicitado por D. José Nájera, 30," an original document in the said archives.

Answer. I have looked over the document. It is an original & belongs to said archives & as such is classified as number 30 of complete Expedientes in said archives.

4 Question. Look on the document now here presented to you marked B. Expediente & filed in this case May 4th 1852 as appears by the certificate of Geo: Fisher, Secy, on the back thereof, & say whether it is a true copy of the original document here presented & referred to, in your last answer.

Answer. I have looked at the document & find it to be a true true copy of the original above mentioned.

Thos. C. Crooked.

Mr. Gresham, Associate Law Agent was present at the taking of this deposition but presuaded in interrogatories.

Subscribed & sworn to before me at San Francisco this twenty ninth day of September A. D. 1853.

Alpheus Felch.

Commissioner.

Filed in Office Sept 29 1853.

Geo: Fisher.
Secy.

Office of the Board of U.S. Commissioners &c &c.

This day before Commissioner Arthur Felch, came Wm E. P. Martzell, a witness in behalf of claimant John March No 213. who after being duly sworn deposed as follows.

Deposition of Wm E. P. Martzell. Questions by Genl James Wilson, Attorney for claimant.

1 Question. What are your name, age & place of residence.

Answer. My name is William E. P. Martzell, my age is fifty five years & I reside at Monterey in California.

2 Question. Look at the document then shown to you marked "Especimiento sobre el paraje nombrado Los Mejanes, solicitado por D. Jose Nunez" 30 being the original document referred to in the deposition this day given in your presence in this case by Thomas E. Cochran, & state whose hand writing as they appear on said document you are acquainted with, & if their signatures on said document are their genuine signatures.

Answer. I am acquainted with the hand writing of Jose Figueroa & Francisco Castillo Negrete. Their signatures appearing on the third page of said original are their true & genuine signatures. The signature of Father Jose Maria de San Gonzales on the fifth page is the genuine signature of said Gonzales. The signature of Jose Castro, Francisco del Castillo Negrete on page eight to a document dated Monterey September 10 1835 are their genuine signatures. The signature of David E. Spence, Jose Abrego & Jose Maria Maldonado when they appear on the ninth page, are their true & genuine signatures. The signatures of the three last named persons & that of Francisco Perez Pacheco on the tenth page are their genuine signatures. The signatures of said Spence, Abrego & Maldonado, &

107 ND
PAGE 12

that of Juan B. R. Cooper on the eleventh page are all their genuine signatures. The signatures of said Spina, Abiza, & Maldonado & that of Salvo Pacheco on the twelfth page are their true & genuine signatures. The signature of Jose Castro appearing on the thirteenth page of said document purporting to be dated at Monterey on the thirteenth day of October 1835 & signed by said Castro as Political Chief ad interim, is the true & genuine signature of said Jose Castro. The signature of Manuel Jimenez on the fourteenth page is the true & genuine signature of said Manuel Jimenez. The signature of Salvo Pacheco on the fifteenth page to a document dated October 15th 1835 is the genuine signature of said Salvo Pacheco. The signature of Manuel Jimenez on the sixteenth and last page of said document is the genuine signature of said Jimenez.

Mr Greenham, Associate W. C. P. Martnell Law Agent was present at the taking of this deposition but participated in no interrogatories.

Subscribed & sworn to
before me at San Francisco this
29th day of September 1853.

Alpheus Felch,
Commissioner.

Filed in Office Sept. 29 1853.

Geo. Fisher,
Sey.

Deposition of
James A. Forbes

Office of the Board of
Commissioners &c &c.

This day before Comr Alpheus Felch, came James A. Forbes, a witness in behalf of claimant John Marsh, No 213, who after being duly sworn

deposed as follows.

Questions by Genl James Wilson, Attorney for the claimant.

1 Question. What are your name, age & place of residence.

Answer. My name is James Alexander Forber, my age is forty eight years & I reside at Santa Clara in California, I have lived in California permanently since the year 1830.

2. Question. Are you acquainted with Don Jose Noyes if yes, how long have you known him.

Answer I do know him - I have been acquainted with him during the last nineteen years.

3. Question. Did you know of his procuring a grant of the rancho called Los Mejanos, if yes, please state all that you know in relation to his procuring the grant, his occupying the land, building houses, the sale of the said rancho by Noyes, to whom sold, & the occupation thereof.

Answer I know that he obtained a grant from the Mexican Government of that rancho. I think it was in 1835, but am not positive of the year. I know that he took possession of the land immediately after he obtained the grant. He both traded & sold merchants at that time in San Jose. He built a corral & put cattle upon it immediately. He also immediately built houses on it suitable for himself & servants. He continued in possession of the tract until the year 1837 or 1839, I cannot be certain of this date. He then sold the place to John Marsh, who took possession of it, put a great many cattle upon it, made improvements on it - & has continued in possession ever since & lives there now.

4 Question. Was you ever on the Rancho while Noyes was in possession of it.

Answer. I was several times.

5 Question. To what use did Nonieja put it while he occupied the place.

Answer. He used it for the breeding of cattle & cultivated a part of the land, I think he put down a vineyard also, but am not certain.

6 Question. Have you been on the Rancho frequently since Dr Marsh purchased & has occupied it.

Answer. I have been on it since Dr Marsh purchased, but have not been there so frequently, as before he bought it. The last time I was there was in 1845. Dr Marsh had a very large number of cattle there at that time, a large well constructed adobe house - several corrals, a vineyard, & cultivated grounds.

7 Question. Will you state if you know any of the natural monuments by which that Rancho is designated.

Answer. It is bounded on the North by the river San Joaquin, as far as the western point of some sand hills or bluffs called Meganos, It is bounded on the West by lands adjoining these sand hills subsequently granted to Mesas - on the South west & south by the dividing range of hills. The hills called Las Cuevas are in or near the southern boundary. The eastern is from these hills to the river San Joaquin.

8 Question. After the time of the grant mentioned by you, was the Rancho generally known & understood to belong to Nonieja.

Answer. It was.

9 Question. Has it been occupied by him & those claiming under him ever since that time.

Answer. It has, It has always been the residence of Dr Marsh ever since he purchased it.

James Alex. Forbes.
Mr Gunbow, Associate Law Agent was present at the taking of this deposition, but proffered

no questions to the witness.
Subscribed & sworn to
before me, at San Francisco, this
24th October A.D. 1853.

Alpheus Felch.
Commissioner.

Filed in Office Oct 24th 1853.

Geo: Fisher.
Stry.

107 ND
PAGE 16

Depositions of
J. E. Wheeler.

Office of the Board of
Commissioners de Se Se

This day before Comr Alpheus Felch, came
J. E. Wheeler a witness in behalf of claimant John
Marsh, No 213, who after being duly sworn deposed
as follows.

Questions by General James Wilson, Attorney for
the claimant.

1 Question. What are your name, age & place of residence.
Answer. My name J. E. Wheeler, my age is thirty five
years, & I reside in Alameda County, California.

2 Question. How long have you lived in California, &
what is your occupation.
Answer. I have lived in California about three & a half
my occupation is that of Surveyor & Engineer.

3 Question. Are you acquainted with the rancho
called Los Negros, claimed by Dr Marsh, if yes,
where is it situated.

Answer. I am acquainted with the rancho. It is
situated between the San Joaquin river & Monte
del Diablo. It is on the left bank of the river.

4 Question. Have you a Commission as Deputy of the Surveyor General of Public Lands in California. Answer. I have.

5 Question. Have you in that capacity ever made a survey of the rancho above mentioned. If you, look at the map now here shown to you marked Exhibit No 1, with the initials A. F. annexed to this deposition & state whether the same is a plat or map of the survey of said rancho made by you.

Answer. I made a survey of it in the said capacity - This map is a true representation of it as surveyed by me. The red lines on the map represent the exterior boundaries of the rancho as I surveyed it. I commenced at the extreme eastern point & ran in a north westerly direction along & near the edge of a sollar until I came to a tular - thence crossing the creek called Los Poblancos. I ran along & near the edge of the tular to the sand hills or Meganos - thence I ran between the Meganos & the river to the point of the Meganos - thence I ran southwardly towards the high hills until I came to the white Oak Springs - thence I ran south eastwardly along the hills towards a Gap in the hills in which a path lies leading from the Arroyo de los Poblancos to the Meganos & in the other direction to San José. This line brought me to the south west corner of the premises as laid down on the map. From that point I ran nearly east to the place of beginning. The extent of the premises included in the survey is about four leagues north & south & will average about three leagues east & west.

6 Question. Are the natural objects referred to in the Expediente obvious & plain to be seen on the ground. If you, name them, & state whether you made the survey in reference to them.

Answer. They are very obvious & unmistakable. The first mentioned is the Sollar; & there is no other in

14
 The whole valley similar to it. The arroyo de los Roblaros runs through the Roblar. The Chamusal mentioned in the Expediente is found, & there is no other like it in the three countries formerly constituting Contra Costa County to my knowledge. The Meganos, at the point of the Chamusal, is a ridge of round hills from one to two hundred feet high. They are blown up on the edge of the water. There are no others like them on the San Joaquin river below Stockton, on the westerly or rather southwestwardly side of the premises are high hills & mountains. And westerly downward the gap before mentioned is very distinguishable when you get to it. The path leads through it. The place marked on the map as the Cerro de la Cuba, is a mountain plainly to be seen from all parts of the valley.

Questions by Mr. Gresham, Associate Law Agent.

1 Question. What description or direction did you follow in running these lines.

Answer. I followed the general description given to me by the Surveyor General, until I arrived at a point where by running thence a straight line to the place of beginning twelve leagues of land would be included in the survey. From that point I ran a straight line to the beginning point.

2 Question. How did you get a point of beginning.

Answer. I took the extreme eastern point of the Roblar. The first line described in my instructions is one running along the whole length of the Roblar.

3 Question. In what direction does the Chamusal lie from the end of your eastern line.

Answer. It is situated in a south west direction from the end of the eastern boundary.

4 Question. From the end of your eastern boundary at the Tular, in what direction did your next line run, crossing the creek of the Pablana to the Megana.

Answer. The general direction of that boundary is west; & this is the northern boundary of the tract surveyed.

5 Question. Is the Gap mentioned by you between the Arroyo & the Megana.

Answer. It is not.

6 Question. Is the hill called Las Cuevas, included within the tract surveyed by you?

Answer. It is not.

7 Question. Does any part of the line surveyed by you border on the Bay.

Answer. It does not.

Questions by Genl Wilson.

1 Question. Look at the paper now here presented to you, with the map thereto attached purporting to be instructions to you by the said Surveyor General for the survey of said land, marked Exhibit No 2, with the initials A. F. thereto attached, & state whether they are the instructions before mentioned by you under which said survey was made.

Answer. They are the same.

J. E. Witcher.

Mr Greenhow, Associate San Agent attending to the taking of this deposition

Subscribed & sworn to before me at San Francisco, this twenty fourth day of October A. D. 1853

Alphus Felch.

Commissioner.

Filed in Office Oct 24 1853

Geo. Fisher.
Scrij.Deposition of
Joaquin NonigaL- 107 ND
PAGE 20Office of the Board of
Commissioners &c &c.

This day before Comr Alpheus Felch, came Joaquin Noniga, a witness in behalf of claimant John Marsh No 213, - who after being duly sworn, deposed as follows. The Secretary to the Board acted as Interpreter.

Questions by Genl James Wilson, Attorney for Claimant.

1 Question. What are your name, age & place of residence.

Answer. My name is Joaquin Noniga, my age is fifty three years, & I reside on the town of San Joaquin in California.

2 Question. Did you obtain a grant of the rancho called Los Meganos, if yes, at what time did you take possession of the same, when did you build a house or houses thereon & how long did you continue in the personal occupation thereof.

Answer. I did receive a grant from the government of California to said land in 1835 or 1836. I took possession of said premises immediately, I believe the same month in which the grant was made. I built a house on the land in the same year & also corral & planted a garden & stocked the rancho with cattle & horses. I lived in the house myself & took care of the cattle on the place & continued to occupy it personally until I sold it to Dr Marsh. While I owned the place I had on it constantly nine or ten men, & never less than seven. I kept that number because it was in an Indian

Country & the Indians were hostile.

3 Question. Did you at any time request a Magistrate to give you Judicial possession of said Rancho, if you, state the time when, what Magistrate you applied to & what was his reply.

213-1

Answer. I did apply to Dolores Pacheco, the Magistrate at San José. There was no other Magistrate in that vicinity. This application was made in 1838. I applied for the purpose of getting judicial possession of it and turning it over to the present claimant Dr. Marsh. He did not give me the possession. His reply was that he could not give me judicial possession, because the danger from Indian at that the place was great & he could not go there - that it would require a large force & he could not go. Dolores Pacheco was over fifty years of age & a very large man & liked his ease and comfort.

Questions by Mr. Gresham, Associate
Law Agent.

1 Question. Was there a grove of Oaks / Roblar / pin or near the tract granted to you.

Answer. There was. There were two - one near the house & the other was along the margin of the Tular about two leagues from the house, or a little less. There were also scattering oak trees along the creek between the two.

2 Question. What was the northern boundary of the land granted to you.

Answer. The river San Joaquin. I do not know how great a distance the river formed such boundary.

3 Question. How far was the house which you built from the river.

Answer. I never measured it. In my opinion it is about two leagues or less.

4 Question. Was the Charnival included in your land.
Answer. It was. But as it was bad land I could make
no use of it.

5 Question. Did you draw your petition for the grant
yourself.

Answer. I framed it, but another person drew it off. I
do not remember who made the map.

6 Question. Do you know between what points ran
the straight line mentioned by you near the beginning
of the description of the land in your petition.

Answer. There were no adjoining neighbors. I
do not recollect the points which I mentioned at that
time.

José Noriega.

Subscribed & sworn to before
me this 9th day of November
1853.

Alpheus Felch.
Commissioner.

Filed in Office Nov 9th 1853.

Geo. Fisher.
Scriy.

107 ND
PAGE 22

Espediente

Sobre el paraje nombrado Los Meganos

Solicitado por

D. José Noriega

107 ND
PAGE 23

2 S. D. K.
 Dello Terceiro Dos Reales

Habilitado provisionalmente por la Administracion de
 la Aduana Maritima de Monterey de la Alta
 California para los años de mil ocho cientos treinta y
 cuatro y mil ocho cientos treinta y cinco
 Figueroa Marmix

Señor. Jefe Sup^{or} Politico

B
 Expediente

107 ND
 PAGE 24

El ciudadano Jose Noriega
 residente en este Territorio ante la
 justificacion de V. S. hago presente;
 De conformidad con las leyes de la materia en este pais, y con alguna proporcion
 informo el Ayuntamiento para emprender el giro mas
 del Pueblo de S. Jose y productivo en el, que es la agricul-
 Guadalupe Si el inte- turay cria de ganados, es por consi-
 = rosado en esta intan- guiente de necesidad tener un terreno
 = cia obtiene los requisitos propios a que aplicar el corto Capital
 proveenidos por el ayun- que poseo, y como al efecto me hallo
 = dudo en su solicitud, dedicado hace algunos dias a reco-
 Si el terreno q. pretende = novos gran parte del que queda al
 esta Comprendido en N. y Nordeste de esta poblacion
 las veinte leguas limitrofas en solicitud de algun paraje baldio
 o diez literales q. espesa que pudiera convenir a mis proyectos,
 la ley de 18 de Agosto hubs de encontrar por ultimo el sitio
 de 1824, si pertenece nombrado los Neganos, cuyo
 a propiedad de algun plano acompaño a este, el cual
 particular, Corporacion, estoy bien informado no pertenece
 Mision o Pueblo, con a terreno de Mision ni particular
 todo lo demas que esta alguno, y cuyos limites son al Este
 concerniente a ilustrar con los Indios de los Tularos y
 la materia. Ecuando Siguiendo de alli linea recta todo
 estas diligencias parará el Roblar hasta un tular y dando
 al N. P. M. de la vuelta al N. contando el Arroyo

Mision de San de los Poblados que para entre el
 p. a. q. espoya lo q. le mismo roblar hasta un megano
 parezca en el particular que esta a la punta de un chamisal
 El Sr. D. Don Figueroa que da al Nordeste: Despues continuando
 General de Brigada, desde este punto hacia el Sur por
 Comandante General todas las lomas que quedan al S. este
 Inspector y Jefe hasta la Montaña que llaman de
 D. Politico au lo los Pulgones, y pasando un poco
 mando, decreto y mas adelante del portezuelo por
 firmo, de q. hoy donde atraviesa la virena que parte
 fe del arroyo para los meganos, tomando
 Don Figueroa el descenso de la loma inmediata
 que se advierte alli quedando dentro
 el territo nombrado de las Cuevas,
 estara otra linea recta de Sur a
 este hasta encontrarla que se indicio
 al Comenzar la delimitacion del Sitio
 que todo el Comite de Cuatro leguas de
 Sur a Norte y tres de este a oeste.

Srio
 Fr. del Castillo
 Negrete

En cuyos terminos y estando seguro de no pertenecer
 el mencionado Sitio como llebo dicho a minor ni
 particular alguno, au como de que nadie hasta ahora
 lo haya pedido.

N. S. Suplico se digne disponer previos
 los tramites de estilo / se me declare la propiedad del
 4. S. L. K. 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.

Figueroa | Manríquez
 — pedido Sitio de los Meganos, y se me ponga en
 posesion de el en la forma de Costumbre, en lo que recibire gracia
 Monterey. Julio 24 de 1835.

Don Noriega
 Haviendo visto con detencion este Sello de Agua =

107 ND
 PAGE 25

Tam^{to} asi la peticion del C. Fr. M^origa como el
respetable decreto de V. S. de fha 25 de Julio del
presente año, a tenido á bien en vista dello acordado
hacer la exposicion siguiente: El terreno es de regadillo
y abrebados, no se halla comprendido en las veinte
leguas limitrofes, y si en las diez literales. El expresado
terreno no pertenece a particular, Pueblo ni mision,
por hallarse a la parte de los Tutares.

Pue^o de S. Fr. Guadalupe 28 de Julio de 1835

Sto Antonio M^o Pico

Don Berroquea

testigos

Ignacio Martinez Tomas Pacheco

J. S. D. K.

Don Jefe Superior Politico

Como p. d Superior decreto de V. S. de 25 del
corriente debo informarlo q. me ocurra digo no
haberse reconocido hasta hoy p. terreno perteneciente a esta
Mision el q. se solicita en este expediente. Sobre las
calidades del terreno, y los requisitos prevenidos p. q. el
interesado pueda ser atendido en su solicitud, nada particular
de q. Convenya informar a V. S., ni tampoco la urgencia
del interesado me permite tomar algunas noticias con
q. pudiera ilustrarse esta materia.

Mision de S. Fr. y Julio 27 de 1835

Fr. J. m. de Jesus S. m.

[Faint handwritten signatures or notes]

J. S. D. K.

107 ND
PAGE 26

26 J. D. K.

Copia del documento de excepcion para salir fuera de la Republica que ha presentado el Espanol D. Don Noriega

Armas de la Republica

213-
213-2

107 ND
PAGE 27

Habiendo acreditado el Espanol D. Don Noriega que tiene impedimento fisico perpetuo p^a salir de la Republica i q^o en consecuencia se halla comprendido en la excepcion de la primera parte del articulo 3^o de la Ley de 20 de marzo de 1829 El Presidente de los Estados Unidos Mexicanos en cumplimiento del articulo 9^o de la misma dispone q^o el interesado pueda permanecer en la Republica p^a la expresada causa i bajo la calidad provista en el citado articulo sobre residencia en la Costa i manda a todas las autoridades au^o civiles, como militares q^o no le pongan embarazo p^a rason de esta ley p^a q^o permanezca en el punto de la Republica que le con- venga a cuyo efecto se le expide el presente documento. Palacio del Gobierno Federal en Mexico a 30 de Marzo de 1833.

J. O. D. S. E.

E. S. J. E. i del D. de R

En copia
Castillo — Gratis Gonzalez

8 J. D. K.

Delo Traxo dos reales
Habilitado provisionalmente por la Administracion de la Aduana Maritima de Monterrey de la Alta California, para los años de mil ocho cientos treinta y cuatro y mil ocho cientos treinta y cinco

Figueroa Ramirez I

Monterrey Setiembre 10 de 1835
Fue al S. Alcalde de esta Capital ante quien la parte de D. Don Noriega, hará una informacion

de tres testigos idóneos que serán interrogados sobre los puntos siguientes: Primero si el solicitante es C. Mexicano por nacimiento, si es casado i tiene hijos i si es de buena conducta. Segundo si el terreno q. p.uede pertenecer a la propiedad de algun particular, Misión o Pueblo, si es de regadio, temporal o abrevadero i que extension tendra. Tercero si tiene bienes de campo con que poblarlo o posibilidad de adquirirlos. Trucadas estas diligencias vuelva el expediente p. su resolución. El S. J. Don Castro primer vocal de la E. Diputación Territorial i Jefe Político interior del Territorio de la Alta California así lo mando, decreto y firmo, de lo q. doi fe.

Dño Don Castro
 H.º del Castillo, Mexico

107 ND
 PAGE 28

Monterrey Setiembre 12 de 1835

Notifiquese al interesado presente los testigos que se han de interrogar sobre los puntos q. comprende el antecedente Superior decreto, recivida la informacion q. S. D. N. q. se pide y fho. devolvase al S. Jefe Supr. Político para los efectos q. haya lugar. El C. David Espino Alcalde 1.º Constitucional en la demarcacion de esta Ciudad así lo decreto, mando y firmo con testigos de aña

H

David Espino
 de aña Don Maria Maldonado
 de aña Don Abrego

En la fecha presente Don Noriega se le notifico el auto q. antecede y entendido dijo: lo oye y q. presenta p.ª q. sean examinados a los señores D. Manuel Lopez, D. Salvo Pacheco y D. Fran.º Pacheco, y lo firmo conmigo y los de aña

M

Spina Don Noriega
 de as.ª de as.ª
 Don Maria Maldonado Don Abrego

28

10 S. D. K.

En la fha presente D. Francisco Pacheco de Secario jura-
mento en forma por el cual ofrecio decir ver-

Sello torero dos reales
Habilitado provisionalmente por la Administracion de la
Aduana Maritima de Monterey Alta California,
para los años de mil ochocientos treinta y cuatro y mil ochocientos treinta y cinco

Figuras

A. Ramirez

dad en lo que supiere y fuere preguntado, y siendo preguntado por su nombre, estado, edad, patria y religion dijo: llamarse como queda dicho, q.º es Casado, de cuarenta y cuatro años, natural de Guadalajara y C. A. R.

107 ND
PAGE 29

Preguntado por el tenor del interrogatorio q.º se advierte en el antecedente Superior decreto, Dijo:

Al 1.º que el q.º Solicita non Mexicano por nacimiento: que no sabe si es Casado i tiene hijos, y q.º es de buena conducta, y responde.

Al 2.º que el terreno q.º pretende no pertenece a propiedad ninguna y q.º lo conoce p.º valdlo: que es de temporal y abrevadero, y q.º su extension sera de tres leguas de largo y de ancho desde dos leguas hasta menos de media y contada

Al 3.º que ignora si tiene vienes de Campo, pero q.º si es seguro tiene posibilidad de adquirir los suficientes para poblarlo: q.º lo dho es la verdad a Cargo del juram.º q.º tiene hecho en lo q.º se afirmo y ratifico. Dijo que lo fue su declaracion y la firmo con mi go y los de as.º

M

Spouse

Fran.º Pava Pacheco

de as.º

de as.º

Don Maria Maldonado

Don Abrego

11 S. D. K. presentado p. la parte de D. Don Noriega, yo el Alcalde recibí juramento en toda forma de dho bajo el cual ofrecio decir verdad en lo que supiere y

fue preguntado, y siendo p. su nombre, estado, edad patria y religion dijo: llamame Juan Paul. R. Cooper: q. es Canado, de edad de cuarenta y tres años, natural de los Estados Unidos del Norte y C. A. R.

Preg. do por el mismo interrogatorio q. lo fue de antecadente testigo dijo:

A lo 1.º que el q. representa no es Ciudadano Mexicano por nacimiento: que ignora si es Canado o tiene hijos y que es de buena conducta y responsable.

A lo 2.º que el terreno q. pretende no pertenece a propiedad ning.ª, que es de temporal y abrevadero, y su estension de dos y media a tres leguas de largo y de media hasta dos leguas de ancho y contada

A lo 3.º que tiene hambre cosas del contenido de la pregunta: que lo dicho es la verdad a cargo del juramento que hecho tiene en el q. se afirmo y ratifico lida q. le fue su declaracion y la firmo conmigo y lo de as.ª

m

Spunse Juan B. R. Cooper
de as.ª de as.ª
San Maria e Maldonado San Abrego

Delo tercero dos reales

12 S. L. R. 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

el mismo dia mes y año siendo presente el C. D. Pablo Pacheco le recibí juramento q. hizo en forma por el cual ofreció decir verdad en lo q. supiere y fuere preguntado, y siendo p. su nombre, estado, edad, patria y religion dijo: se llama como dicho, que es Canado, de edad de cuarenta a.º natural de esta Capital y C. A. R.

107 ND
PAGE 30

Preg^{do} por el mismo estilo q^e lo fueron los dos anteriores
Dijo:

Alo 1^o que no es Ciudad^o Mexicano por nacimiento
q^e no sabe si es casado ni si tiene hijos, y q^e si es de
buena conducta y resp^{de}

Alo 2^o Que el terreno q^e pretende no perte-
-nea á ninguna propiedad: q^e es de temporal y abu-
-vadoro, y q^e puede hacerse de regadío con la industria
p^a tener arroyos de agua permanente: q^e su estension será
(mas o menos) de cuatro o cinco leguas de largo y ancho
de tres, y resp^{de}

Alo 3^o que tiene bastante bienes de campo:
que lo dicho es la verdad, a cargo del juram^{to} q^e tiene
hecho en el q^e se afirma y ratifico toda q^e le fue su
declaracion y la firmo con miso y lo ve asá

Sp^{una} de las^a de las^a
Don Maria Maldonado de las^a
Don Abrego

13 S. D. K.

En la fha concluida la informacion q^e se
pide se devuelve al Sr. Jefe Superior Político este espe-
-diente en cumplimiento de lo mandado en el antecedente
auto y p^a Constancia lo anoto y rubrico

R

Monterrei 13 de Otu de 1835

Vista la peticion con q^e da principio este
expediente, la informacion del Ayuntamiento del Pueblo
de S^{ta} Teresita de Guadalupe, la esponsor de testigos, con todo
lo demas q^e se tuvo presente i ver con vino; de conformidad
con lo dispuesto por las leyes y reglamentos de la materia,
se declara al C. D. Don Noriega dueño en propiedad
del terreno conocido con el nombre de Los Algeanos.
Se vive el despacho correspondiente, tomacion de el
en el libro a q^e corresponde i dirijase ala E. S. J. S. J. S. J.
p^a su calificasion. U. S. D. Don Castro, primer

Don 12 p^a

Vocal de la E. Diputación Territorial y Jefe S. Político
interino de la Alta California así lo mandó, de voto
ífirmo de q.º doy fe

Pou Castro

14 A. D. K.

Ello terreno dos reales
Habilitado provisionalmente por la Administración de
la Aduana Marítima de Monterey de la Alta California
para los años de mil ochocientos treinta y cuatro y mil ocho
ciento treinta y cinco.

Castro

Angel Ramirez

—terrey 14 de Otu de 1835—

En sesión de este día se acordó por la
E.ª Diputación para este expediente a la Comisión
de terrenos baldíos

Man. Jimeno

15 A. D. K.

Exmo Sr

La Comisión de terrenos baldíos informada
del expediente q.º se mandó practicar por solicitud q.º
hace el Ciudadano Pou Noriega del terreno nombrado
Los Meganos no encontrando en él objeción alguna
que hacer, siendo en todo conforme a la Ley de 18 de
Agosto de 1824 como al art.º 5.º del reglamento de
24 de Nbre de 1828, pone a la deliberación de V.ª E.
la sig.ª proposición.

Se aprueba la conexión hecha al Ciudad.
Pou Noriega del terreno nombrado Los Meganos
Concedido en 13 de Otu de 1835

Monty 15 de Otu de 1835

Salvio Pacheco

Monty 15 de Otu de 1835

En sesión de este día aprobo la E.ª
Diputación el dictamen de la vuelta con esta proposición

16 A. D. K.

Man. Jimeno

Office of the Surveyor General of the United
States for California

I, Samuel D. King, Surveyor
General of the United States for the State of California,
and as such now having in my office, and under
my charge and custody a portion of the archives of the
former Spanish and Mexican Territory or Department
of Upper California, do hereby certify that the
Sixteen pages of tracing paper preceding & hereunto annexed
numbered from one to Sixteen 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 my office.

In testimony whereof I have hereunto signed
my name officially, and affixed my private seal (not
having a seal of office) at the City of San Francisco
Cal, this 29th day of November A.D. 1851

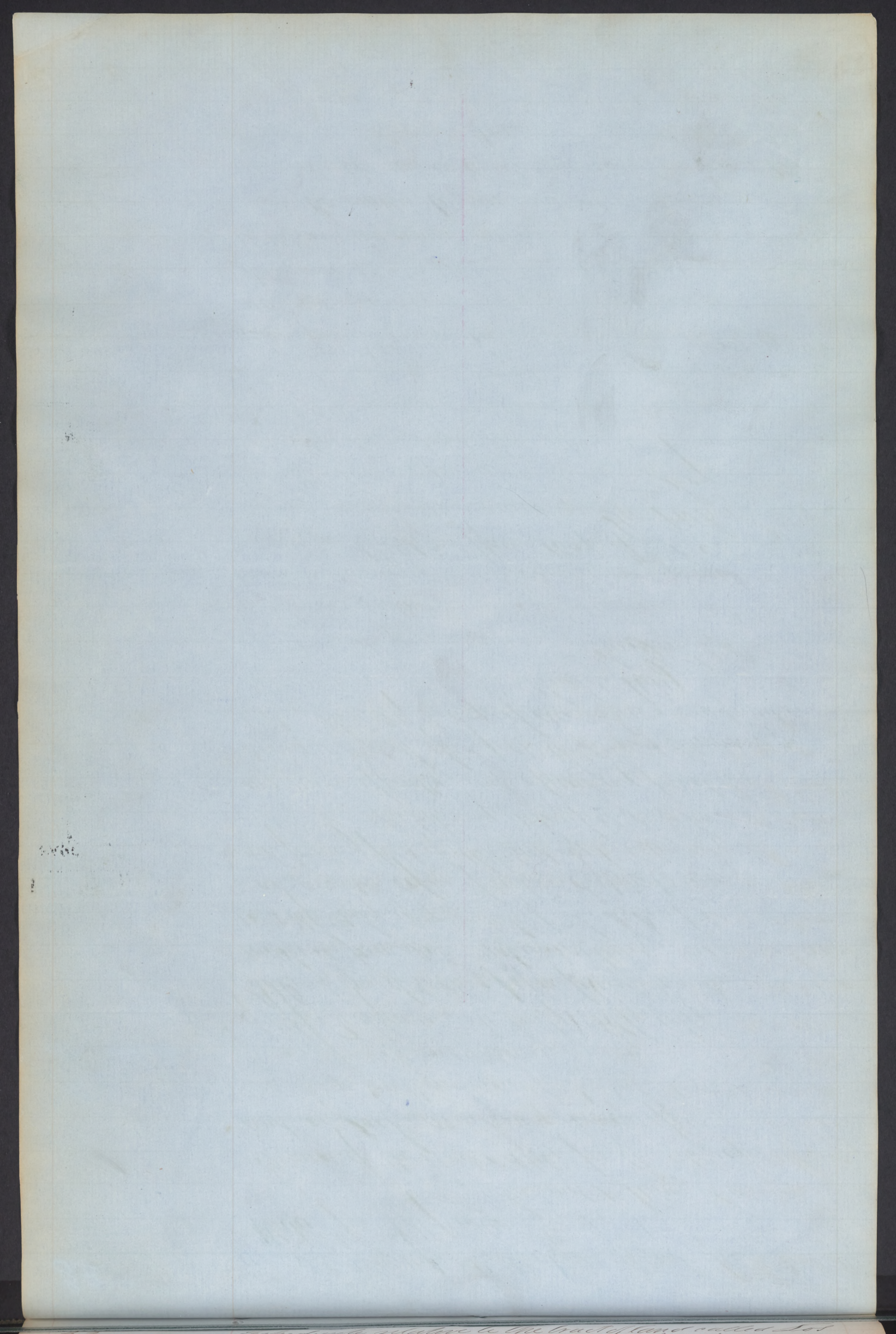
Samuel D. King

Sur Gen Cal

Filed in Office May 4th 1852
Geo. Fisher
Secy

107 ND

PAGE 33



Expediente relative to the tract of land called Los
Meganos petitioned for by Don Jose Noriega.

C
Translation.

(Sello Toron) Third Seal, two seals.

Provisionally authorized by the administration of the
maritime Custom house of Monterey, California for
the year 1834 + 1835.

Figueron.

A. Ramirez.

Monterey July 25. 1835.

To his Honor the Superior Po-
litical Chief.

In conformity
with the laws upon the

Citizen Jose Noriega

subject let the Ayun-

a resident of this territory before your

taniente of the Pueblo

Honor's justice de represent that

of San Jose Guadalupe

having desired to settle in this coun-

try, & having some means to con-

duct the most common & produc-

ive pursuit in it i. e. agriculture &

the raising of cattle, for which

he wishes to provide for his

reason it is indispensable to procure

petition & whether the

some land upon which to bestow the

land he claims is

capable I have, & for that purpose I

within the twenty br-

have been for some days past in-

dering leagues, or the

gaged in examining a great portion

ten literal ones, upon

of that bearing north & northeast

ed in the law of August

of this settlement, so as to find out

18th 1824, whether it

a vacant spot to carry on my

belongs to the property

propos, at last I found a place

of any private individ-

called Los Meganos, the plat of

ude, corporation,

which I think it would have

Mission, or Pueblo, with

been informed that said land does

everything else concern-

not belong to any Mission or private

-ing the matter, to

individual. The boundaries

elucidate the same,

of which are on the East the

These proceedings
being done, let the
same be referred to

Indians of Los Pulares, then in
a straight line including all the
Oak grove as far as a Pular -

107 ND
PAGE 34

the Rio de the Faltura thence North including the creek
 Minister of the Min. of the Poblano which runs through
 - river of San Jose, to the said grove, as far as a sandy
 state what he may hill situated on the point of a Cha-
 dum proper on the - mural (thicket) bearing Northeast-
 subject. thence running south along the hills

His Honor is situated on the West as far as the
 Figueroa, Benjadin mountain called the mountain
 General, Comman- de las Pulgonas, thence passing
 - dant Genl. Inspe- a little beyond the gap, where crosses
 - tor of Superior Polit- the path from the creek towards the
 - ical Chief thus did sandy hills, following the slope of the
 command, decret adjoining hill there to be seen, lea-
 - sign, which I attest - ring on the inside the little hill

Jose Figueroa called de las Cuebar, thence in a
 Fran^{co} del Castillo straight line between South and
 Nigute. East until it meets the line indi-

Sicij.

- cated in the beginning of the delin-
 - eation of the place, the same com-
 - prising four leagues from South
 to North & thence from East to West.

Under which description I assured
 that the aforementioned place does not belong, as I
 have stated before to any Mission or private individual
 & as no one would now has petitioned for it, I would
 request your honor to deign, to direct, as usually to the
 usual forms to grant me the property of the afore-
 - mentioned San Meganos, & that judicial pres-
 - sion of it be given me in due form of law, in
 which I shall receive favor.

Montrey, July 24th 1835.

(Signed) Jose Noriega.

This illustrious Ayuntamiento having examined

107 ND
 PAGE 35

minutely the petition of citizen Jose Nunez as well as your Honor's respected decree dated 25th July of the present year, in view of its provision they have thought proper to make the following exposition; viz The land is irrigable & contains watering places. It is not comprehended within the twenty border leagues, but is within the ten littoral leagues. said land does not belong to any private individual, Pueblo or Mission, the same being situated towards the Dulares.

Pueblo de San Jose Guadalupe July 28th 1835 -

Antonio Maria Pico.

Jose Barayza. Secy.

Witnesses. Ygnacio Martinez, Tomas Pacheco.

To his Honor the Superior Political Chief.
As by your Honor's superior decree dated the 25th inst I have to inform what I may know, I have to state that until now it has not been acknowledged to belong to this Mission, the land which it is this expedient. As to the character of the land & the requisites established to entitle the interested party to be heard in his petition. I know of nothing in particular to say to your Honor nor does the urgency of the party permit me to take some information to illustrate the same.

Mission de San Jose July 29th 1835 -

(Signed) Father Jose Maria de Jesus Gonzalez.

Copy of the document of exception to enable the Spaniards Don Jose Nunez not to leave the Republic.

Arms of the Republic.

The Spaniard Don Jose Nunez having admitted that a perpetual physical impediment prevents his leaving the Republic, & that in consequence he comes under the exception of the first part of the

Article 3^d of the law of March 20th 1829 The President of the United Mexican States in conformity with article 9th of the same, decrees that the interested party may remain in the Republic for the reason expressed, under the established qualification in said article relative to a residence on the coast & he commands all the authorities civil as well as Military, not to trouble him by reason of this law, & that he shall reside at any point of the Republic he may deem best to his advantage for which purpose the present document is now hereby issued to him. Given at the Palace of the Federal Government in Mexico this 30th day of October March 1833.

Given by order of his Excellency.

The Secretary of State & Finance,

(Signed) Gonzalez.

A true copy. Castille.
gratis

Mexico September 10th 1835.

Let this be referred to the Alcalde of this Capital before whom the petitioner Sr Jose Nonje will produce the information of those competent authorities who will be interrogated upon the following points; First whether the petitioner is a Mexican citizen by birth, whether he is married & has children & whether he is of good conduct; Second, whether the land which he petitions for is the property of any private individual, Mexican or Pueblo, whether the land is irrigable, temporal or pasture land, & what is its extent; Third, whether he owns any stock to put thereon, or whether there is any possibility of his acquiring it, all which being fulfilled let the expediente be returned for its provision.

Senior Don Jose Castro, Senior Member of the Territorial Deputation & Political Chief administrator of the Territory of Alta California thus

37

did command, deuce sign, to which I attest.
Jose Castro.

Fran^{co} del Castillo Negrete
Sicry.

piece # 4.

Montreux, September 12th 1839.

1835?

Notify the interested party, to present the witnesses which are to be interrogated upon the points comprehended in the preceding superior decree, let the information asked for, be received, which being done it shall be returned to his honor the superior Political Chief for such purposes as may be deemed convenient; citizen David E. Spence, First Constitutional Alcalde of the district of this Capital thus did decree, command & sign, with assisting witnesses.

David E. Spence.

ant^o Jose Maria Maldonado. Arrip^o Jose Abrego.

On the same date was notified to D^{no} Jose Noriega being present the preceding decree which he having understood said he heard & that he present for examination Messrs. Juan Cooper, Salvo Pacheco & Fran^{co} Pacheco & signed the same with me & assisting witnesses.

David E. Spence.

Jose M^a Maldonado. Jose Noriega.
Jose Abrego.

On the same date D^{no} Fran^{co} Pacheco being present was sworn in due form of law, by which he offered to state the truth to the best of his belief & upon what he might be interrogated, & having been asked for his name, state, age, country and religion, said, that his name was as had been

107 ND
PAGE 38

stated, that he is married, is forty four years old, is a native of Guadalajara, & an Apostolic Roman Catholic being questioned upon the interrogatory contained in the superior decree preceding, he said 1st That the petitioner is not a Mexican by birth, that he don't know whether he is married & has any children, that he is of good conduct.

2^d That the land he petitions for does not belong to any one & that he knows it to be valdies (vacant) that it is temporal land & pasture land, & that its extent is about three leagues in length, & from two leagues to less than half a league in width.

3^d That he does not know whether he has any stock but that he is certain he has the possibility of acquiring a sufficient number to put thereon, that what he has stated is the truth, under the oath administered to him which he affirmed & ratified after his declaration had been read to him & he signed it with myself & the assisting witnesses.

Spence.

ass^t José Maria Maldonado. ass^t Fran^{co} Pérez Pacheco.
José Abrego.

Citizen Juan Cosper directly after having been presented by Sr. José Noriega, & the Alcalde administered to him the oath in all due form of law, & under which he offered to state the truth to the best of his belief & upon what points he might be interrogated, and being asked his name, state, age, country and religion, said his name was Juan Bautista R Cosper, & that he is married, is forty three years of age, was born in the United States of America & is Apostolic Roman Catholic, questioned on the same interrogatory as was the preceding witness he

107 ND
PAGE 39

says.

1st That the petitioner is not a Mexican by birth that he does not know whether he is married or has any children.

2^d That the land he petitions for does not belong to anyone, that it is temporal & pasture land, & that its extent is about two & a half or three leagues in length & from one half to two leagues in width.

3^d That he has both the requisites imbrued in the questions that what he has stated in the truth under the oath administered to him, which he affirms & ratifies after this declaration had been read to him, & he signed it with myself & the assisting witnesses.

(Signed) James.

assist^{ant}
Don Maria Maldonado. Juan B. R. Cooper.

assist^{ant}
Don Abrego.

On the same day, month & year Salvi Pacheco being present, was sworn in due form of law, by which he offered to speak the truth to the best of his belief and upon what he might be interrogated, & being asked for his name, state, age, country & religion, said, He was named as above stated, is married, is forty years old, a native of this Capital & Apostolic Roman Catholic, questioned on the same interrogatory as was the preceding witness, he said.

1st That he is not a Mexican citizen by birth, that he does not know whether he is married or has any children, that he is of good conduct.

2^d That the land he petitions for does not belong to anyone & that he knows it to be temporal & pasture land, & that it can by proper industry be made irrigable, because it has crickets containing

running water.

3^d That he has sufficient stock, that what he has said is the truth under the oath administered to him which he affirmed & ratified after his declaration had been read to him, & he signed it, myself & the assisting witnesses.

(Signed) Spence.

Salvador Pacheco.

Jose Maria Maldonado.

Jose Abrego.

107 ND
PAGE 41

On the same date, having taken the information requested, this Expediente is returned to the Superior Political Chief in compliance with the provisions of the foregoing decree. In witness whereof I note it down, & sign it with my seal.

Monterey 13 October 1835.

Having examined the petition at the head of these proceedings, the information of the Ayuntamiento del Pueblo de San Jose Guadalupe, the deposition & witnesses with everything else that was thought to bear upon the subject, in conformity with the requirements of the laws & regulations in the matter Don Jose Noriega is hereby declared owner in fee of the land known by the name of Los Moganos; let the corresponding patent be issued, let it be entered in the proper book & transmitted to the Govt deputation for its qualification. His Honor Don Carlos Senior Member of the Govt Territorial Deputation & Superior Political Chief administrator of Alta California thus commands decree & sign which I attest.

(Signed) Don Carlos.

Monterey 14 October 1835.

Free #112

41

In the session of today the Most Excellent Deputation agreed to refer these proceedings to the committee on vacant lands.

(Signed) Manuel Jimenez.

Most Excellent Sir,

The committee on vacant lands having examined the proceedings at the instance of citizen Don Noriega relative to the parcel of land called Los Meganos finding no objection whatever against it & it being in conformity with the law of 18 of August 1824 & the article 5th of the regulations of 21st November 1828 offer to your Excellency's deliberation the following proposition.

They approve the concession made to citizen Don Noriega of the land called Los Meganos granted on the 13th October 1835.

Monterey 15 October 1835.

(Signed) Luis Pacheco.

Monterey 15th October 1835.

In session of this day the Most Excellent Deputation approved the foregoing opinion with their propositions.

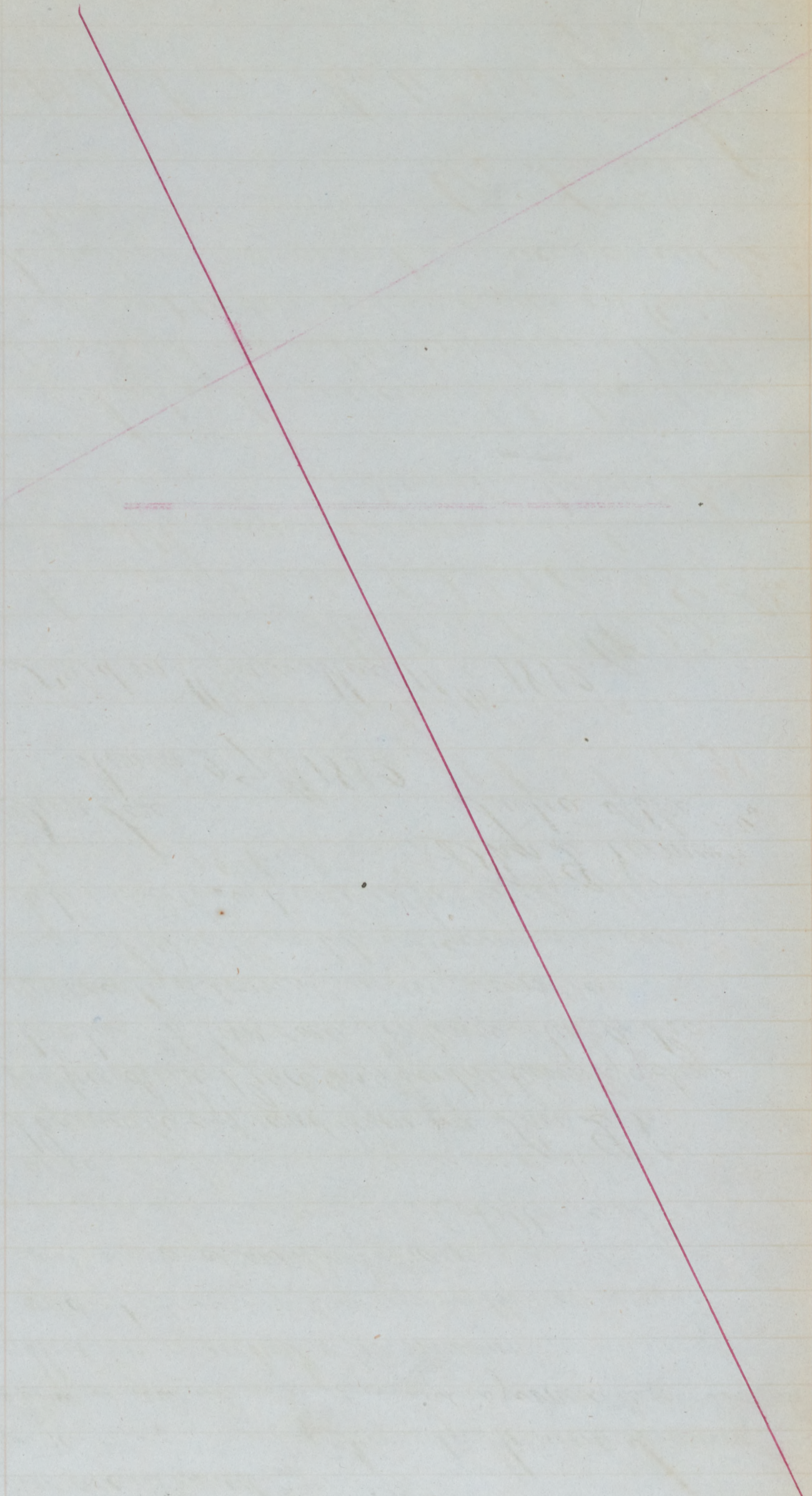
(Signed) Manuel Jimenez.

I certify the foregoing to be a true & correct Translation (with the corrections) of the Spanish document on file in this office, in Case No. 213 John Marsh, claiming the place named Los Meganos.

Geo. Fisher. Secy.

Filed in Office May 4th 1852

Geo. Fisher. Secy.



1865
1865

E.

Certificate of
Anto M^o Pico.

I hereby certify that I was Constitutional Alcalde of the Pueblo de San Jose in the year 1835 in which year Don Jose Noriega obtained the grant of the Rancho de los Negros, which at that time was within my jurisdiction & that it was not possible for me to go there to give formal possession on account of the incessant hostilities of the wild Indians in that district without a military escort, which I could not obtain.

Antonio M^o Pico.

Personally appeared before me Thos L. Vermorel a Justice of the Peace for the County of Santa Clara, & the town of San Jose, Antonio Maria Pico, to me personally known who being sworn says that the matter set forth in the foregoing certificate is true to the best of his knowledge & belief.

San Jose

March 27th 1852.

Thos L. Vermorel
Justice of the Peace.

Filed in Office May 11th 1852.

Geo: Fisher.
Clerk.

BYCE
100

This Indenture made & entered into this twenty seventh day of March in the year of our Lord one thousand eight hundred & fifty two, between Don Jose Noriega of the city of San Jose & county of Santa Clara & state of California & Manuela Fernandez his wife parties of the first part - Transfer. & John Marsh resident of the County of Contra Costa & Doc. H. H. No. 1 arrived to the state aforesaid of the second part - Whereas that whereas Depo of Jose Noriega the Jose Noriega on the month of December A.D. 1838 taken before Comr did sell, convey & deliver possession for a good & valid consideration by him at that time received for the said Highland Hall consideration by him at that time received for the said July 26 1853. party of the second part a certain rancho or tract of land now lying & being in the county of Contra Costa & known & distinguished as the Rancho Las Mesas & more particularly described in the original concessions thereof made to the said party of the first part by Don Jose Castro Cefe Politico of Alta California, bearing date the 13th of October 1835 & the map thereof on file in the archives of Alta California now in possession & custody of the government of the United States & reference whereunto is here made - Now therefore in consideration of the premises & of the sum of one dollar paid by the said party of the said second part to the said party of the first part, the said party of the first part hereby ratifying & confirming the sale & transfer aforesaid doth hereby convey & confirm unto the said party of the second part, his heirs and assigns or other legal representatives forever all the right, title & interest hereunto set out in the said party of the first part or either of them by virtue of the aforesaid grant or concessions to the premises herein before described or referred to, To have & to hold the same, together with all the rights, privileges & appurtenances free from any claim or encumbrance of the said party of the first part - unto the said party of the second part, his heirs

and assigns forever.

In testimony whereof the said parties of the first part have hereunto set their hands & seals the day & year first above written.

José Noriega (seal)
 Manuela Fernandez (seal)

State of California
 County of Santa Clara.

3

On this 27th day of March A.D. 1852, personally appeared before me a Notary Public in & for the County aforesaid, José Noriega & Manuela Fernandez, his wife, known to me to be the persons described in & who executed the foregoing conveyance & who signed the same in my presence, and the contents therein being explained to them by a competent & sworn Interpreter, the said José Noriega acknowledged to me that he executed the same freely & voluntarily & for the uses & purposes therein mentioned. And the said Manuela Fernandez, being examined by me separately & apart from her said husband acknowledged to me that she executed the same freely & voluntarily, without compulsion or undue influence on the part of her husband & for the uses & purposes therein mentioned.

Given under my hand & private seal, no official seal having yet been provided, at the city of San José the day & year first above written.

(seal)

Thos L. Vermeule
 Notary Public.

Filed for record 30th March 1852 at 1/2 past 10 o'clock A.M. Recorded immediately Vol 2.

107 ND
 PAGE 45

45

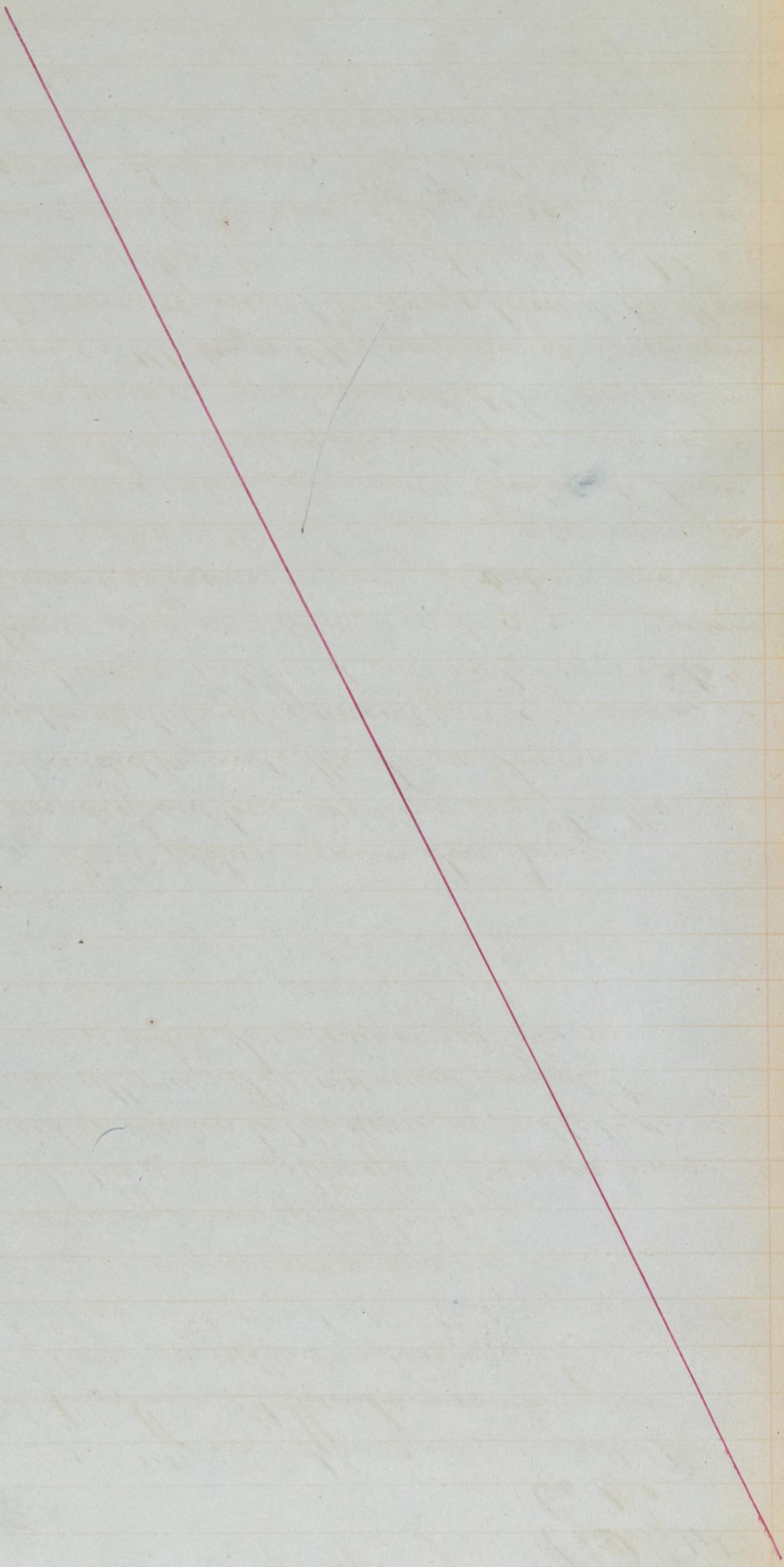
book of Land titles page 8.

Thos A. Brown
Co Rec.

Filed in Office May 4th 1852.

Geo. Fisher
Sey.

107 ND
PAGE 46



U. S. Surveyor General's Office
San Francisco, Cal, May 24th 1853.

Sir.

213-3

Exhibit No 2.

annexed to depu-
-ation of
J. E. Whitcher.

The Attorney of John Marsh has requested this office to have you appointed to make a preliminary survey of a tract of land lying on the San Joaquin River to the extent of four leagues North & South & three leagues East & West. Agreeably to his wishes you are hereby appointed to execute an evincatory survey of that tract.

In the archives of this office there is an Expediente or record in relation to the claim referred to by John Marsh's attorney. The said record purports to contain a decree in which Jose Noriga is declared owner of a tract of land known by the name of Los Meganos, but neither the extent nor the boundaries of the tract are mentioned therein.

In his petition, however, Jose Noriga describes the bounds of said tract as follows, viz. "On the East it is bounded by land of the Tular Indians. thence along the whole length of an oak grove as far as a Tular thence turning Northward, crossing the creek of Los Poblanos, which runs through said oak grove, & running as far as a Megano (meaning probably a sand hill or bank) situated at the extreme point of a channel (rush marsh) lying on the Northward & Eastward. From this point westerly all along the hills lying westward of the tract as far as a mountain called Los Bulbones, & passing a little beyond the gap through which lies a path running from the Arroyo towards the Meganos thence descending the immediate hill there to be seen & leaning inside the corral of Las Curvas, drawn a straight line Southward & Eastward until it meets the one indicated in the beginning of the description of the tract; the whole of which amounts to four leagues South & North & three leagues East & West." For the better understanding of the above description I

107 ND

PAGE 47

47

herewith enclose a fac-simile copy of the sketch which accompanies the petition of Nonigo. Furthermore the three witnesses appointed by order of the acting Governor to report upon Nonigo's lands in the case of the quantity, extent &c, of the tract in question state as follows: The first says that the tract is arable & contains watering places, & its extent may be three leagues in length & from two to less than half a league in width - the second witness states, that it is from two & a half leagues to three leagues long, by two in width, & the third witness says that it may be four or five leagues in length & three in breadth.

Before executing the survey, you will ascertain of them being any adjoining claimants under alleged Spanish or Mexican titles, notify them in writing of the time when you will be running any line in which they may be interested, & you will make full & accurate entries in your field book of any objections which may be made to any of the lines, & return to this office any protest or documents which may be offered to you for that purpose. You will also survey & return the notes of any lines which any opposing parties may contend to be the true lines of separation & for which they may be willing to compensate you, & when any line is an agreed ~~see~~ line, that fact must be noted, as also the names in full of the persons consenting thereto.

You will establish each corner & mark each line in the manner required in executing the public surveys, except that instead of marking your posts & bearing trees with sectional numbers, you will designate them with the letter J. N. & number the corner posts in regular numerical order.

Your field book will be kept in the same manner & furnish all the information required in performing public work, carefully noting the variations of the

48

needed to ascertain which you should make frequent observations.

The survey must be made with reference to the meridian & by chains & links testing your chains by the standard in this office before you proceed to the work.

You should be particular in your measuring & calculations, so as to preclude the necessity of a revision of the work on the field at any time hereafter.

Youself & assistants will qualify in the same manner as if executing public work & the evidence thereof returned with your notes. The notes to be accompanied by an accurately constructed map of the survey on a scale of 40 chains to the inch, & also by all observations & calculations in detail having reference to the ascertainment of any line or the area of the tract.

Understanding that you have made an arrangement with the claimant as to your compensation, it will only be necessary for me to state that under no circumstances will this office be responsible for or compensate you for any services connected with the execution of this order.

You will consider the square league to contain $4340\frac{277}{1000}$ acres.

One or more of the lines of your survey should be connected with one or more points of any one line or lines of the general survey of the public lands.

It is to be especially understood, that by authorizing this survey it is only intended to comply with the wishes of the parties, or intended to exhibit a survey of the lands they claim, & not as expressing any opinion whatever on the part of this office as to the merits or validity of the claim.

Very Respectfully &c
Sam. D. King
So. Gen. Cal.

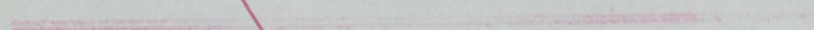
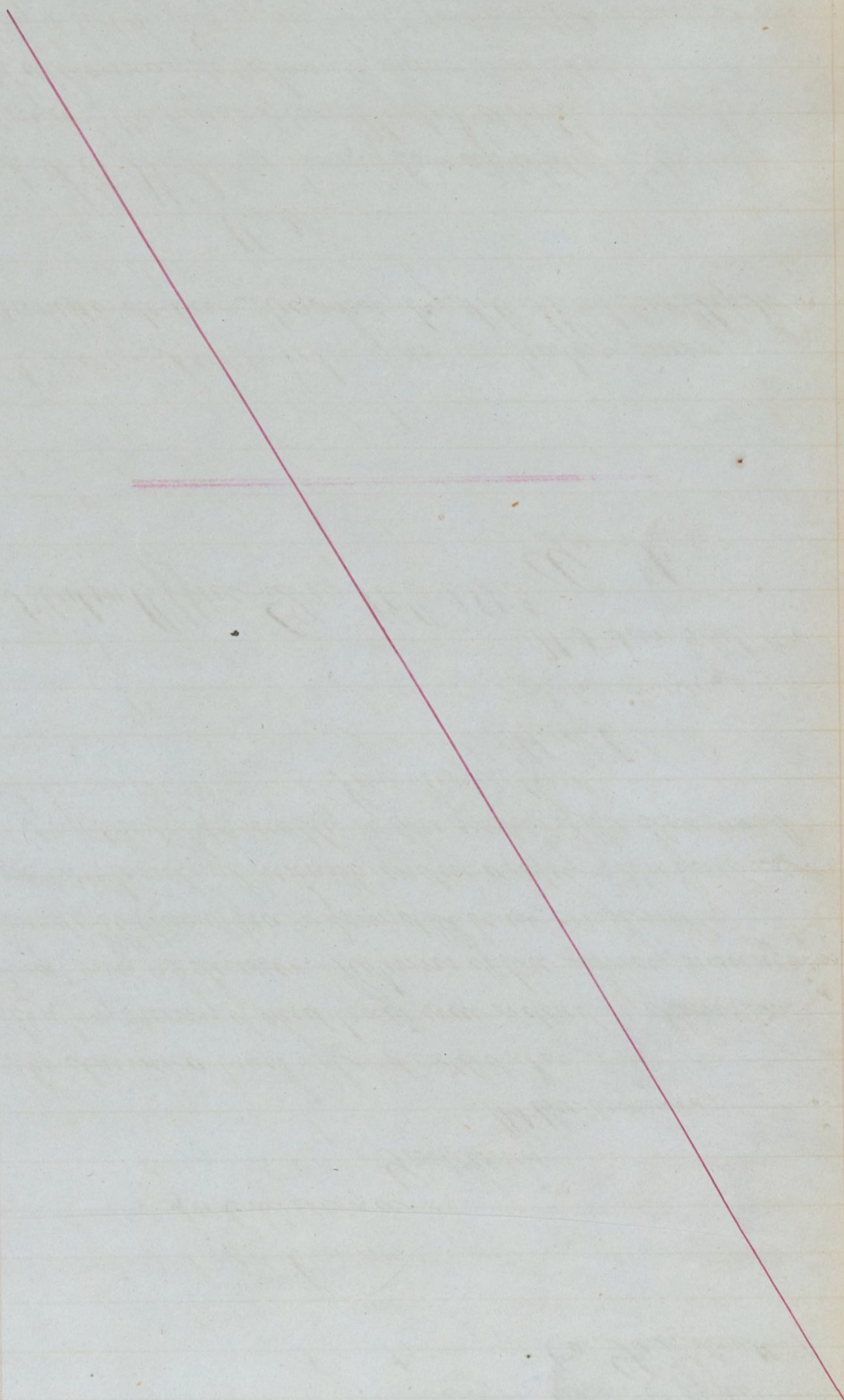
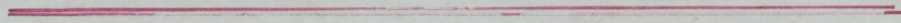
Mr Jeremiah E. Whitcher
Presnt.

49

7/213

Filed in Office Oct 24 1853.

Geo: Fisher.
Sicily



107 ND
PAGE 50

5400
AD

50

U. S. Surveyor General's Office
San Francisco, Cal. December 10th 1853.

Hon^{ble} Board of
U. S. Land Commissioners
for California.

Gentlemen.

At the request of John Marsh

Communication
of Surveyor General
covering Field
Notes of Survey
& map.

who claims a tract of land called La Meganon, an initi-
-tatory survey of said tract was ordered by Saml. D. King
Esq, my predecessor. Returns of the survey, having been
made to this office, & found to be in conformity to his
instructions, I herewith enclose a copy of the field notes
& map thereof agreeably to the wishes of the claimant.

Very Respectfully

Your Obedt Servant
John C. Hays.

U. S. Sur. Genl. Cal.

Filed in Office Dec 10th 1853.

Geo. Fisher Secy.

107 ND
PAGE 51

Field Notes of Copy of Field Note of an initiatory survey of the
Survey. Rancho de la Meganon, by J. C. Whitcher, Dep. Surveyor.

Oath.

I, J. C. Whitcher, having been appointed a Deputy Sur-
-veyor of the lands of the United States, in the State of
California, do solemnly swear that I will well & faithfully
-ly & to the best of my skill & ability, & according to the
-laws of the United States & the instructions of the Surveyor
General, perform the duties so confided to me, as I shall
-answer to God at the great day.

(Signed) J. C. Whitcher.

Sworn to & subscribed before me at Oakland, Alameda

County in the State of California, this 15th day of August
A.D. 1853.

(Signed) A. M. Brockelbank.
Notary Public.

We P. L. Hill & W. C. Boray having been appointed
chairmen in the name of J. E. Witcher, Deputy Sur-
veyor in California, do solemnly swear that in all our
-ing of public lands or private land claims in which
we shall be employed, that we will level the chain
in measuring over uneven ground & will & truly plumb
the tally pins whether sticking or dropping the same &
that we will report the true distance to all notable objects
& the true lengths of all lines that we may assist in mea-
-uring, & will make correctly & distinctly the letters &
numbers of all corners that we may be required to make,
& that we will faithfully act as required by said deputy
from time to time in planting the corner boundaries
whether the same be posts or marks, either of earth
or stone, together with such other duties as we shall
be called to perform by said deputy in the discharge
of his surveying duties, to the best of our skill & ability.
So help us God.

(Signed) P. L. Hill.
(Signed) W. C. Boray.

Sum to & subscribed before me at San Francisco,
County of San Francisco, in the State of California
this 23rd day of August A.D. 1853.

(Signed) John Vandewater.
Notary Public.

J. Ramon Miranda, having been appointed a Flag
bearer in the name of J. E. Witcher, Deputy Surveyor
in the State of California, do solemnly that in all

surveys of public lands or private land claims in which I shall be so employed that I will & truly well & truly perform the duty of a Flag bearer & that I will otherwise faithfully act as required by said Deputy from time to time in planting the corner boundaries, whether the same be posts or mounds, either of earth or stone, together with such other services as I shall be called to perform by said Deputy in the discharge of his surveying duties to the best of my skill & ability, so help me God.

Ramon ^{his} Miranda.
mark

Given to & subscribed before me at Martinez, County of Contra Costa in the State of California, this 23rd day of August A.D. 1853.

(Signed) Thomas H. Brown
County Clerk.

I, Edward Price, having been appointed a chairman in the name of J. E. Whelcher, a Deputy Surveyor in California, do solemnly swear that in all surveys of public lands or private land claims in which I shall be so employed, that I will level the chains measuring over uneven ground & well & truly plumb the tally pins, whether sticking or dropping the same, & that I will report the true distance to all notable objects & the true lengths of all lines that I may assist in measuring, & will mark correctly & distinctly the letters & numbers of all corners that I may be required to mark, & that I will faithfully act as required by said deputy from time to time in planting the corner boundaries, whether the same be posts or mounds, either of earth or stone, together with such other services as I shall be called to perform by said Deputy in the discharge of his surveying duties to the best of my skill & ability, so help me God.

(Signed) Edward Price.

Sworn to & subscribed before me at Bunkerwood at Contra Costa County, in the State of California, this 1st day of Sept. A. D. 1853.

(Signed) J. E. Whelcher
Dep. Sur.

Field Notes.

Of the initiating survey of the Rancho de los Meganos, claimed by Dr John Marsh - Commenced 24th Aug 1853 & completed 10th September 1853, by J. E. Whelcher Deputy Surveyor.

Rancho de los Meganos
Monday Aug 23rd 1853

Ascertaind that a grant is claimed on the West, and another on the South. Proceeded to notify the claimants of the day when I shall run the lines on the sides contiguous to their claims. Mr Murray claiming on the West promised to attend, but failed to do so. Mr Noviga who claims a Sobranie did not answer.

chs, lks

North. Retraced line between Secs. 7 & 12. Township 1.

North, between Ranges 2 & 3 East of the Mount.

Diablo Mountain Variation $15^{\circ} 48' E.$

39.90 To $\frac{1}{4}$ Sec, corner.

79.90 To corner to Secs. 1, 6, 7, & 12. thence, August 24th

North Between Secs 1 & 6.

19.00 To thick chamizal, offset East 8.00 chs.

thence North 141.00 chs - thence West 8.00 chs.

back to line at the corner of Secs. 25, 30, 31 &

36 of Township 2. North, Ranges 2 & 3 East.

At 30 chs. North of corner to Secs. 1, 6, 7 & 12.

passed a Mustang corral 8 chs. E. of range line.

54

chs. lks. Rancho de los Meganos.

North Between Secs 25 & 30.

30.00 Road from Manhis to Stockton. Iron house
bear S. 55° E. about 25 chs.80.00 Corner to Secs, 19, 23, 24, & 30. the last three
miles is worthless, Sandy canons & brushy.

North between 19 & 24.

15.00 Triple Oaks, 8 inches each in diam.

40.80 Set a post near the edge of the tule
2nd rate rolling prairie.107 ND
PAGE 55

Rancho de los Meganos.

Beginning at an Oak tree (Roble) 4 in. dia
marked J. IV. No. 1. This tree is on the northeast
of the Oak grove referred to in the instructions of
the Surveyor General to me, as an extract from
the original papers, & is also on the edge of the
tulare plains. - It bears S. 41° W. 36.55 chs.
from the 1/4 Sec. corner on the base line between
Secs 24 & 35. of Range 3. East.

Thence along & near to the
border of the timber on the left & the plains of the
tulare on the right.

N 11° W

137.94 To an Oak 24 in. diam, marked J. IV. at 50 chs
enter low bushes, very salt, called Malvaial, -
at 80 chs, leave same, extends to the West about 1/2
a mile, thence

N 49° E

105.75 At 70 chs, corral, about 15 chs, north, used for
marking & branding cattle.

N 59 1/4 W

45.70 To an Oak 8 in. dia, marked J. IV. at 100 chs
a pond & tulares, 3 chs wide.

N 7 1/2 W

cho. Uca

Rancho de los Negaros.

108.80 To an Oak 15 in, dia, marked J. M.
N. 20 1/4 W.

5.60 To an Oak 12 in, dia, marked J. M.
N. 23 1/4 W.

14.25 To an Oak 20 in, diam, marked J. M.
N. 25 1/4 W.

31.50 To an Oak 18 in, dia, marked J. M.
N. 30 3/4 W.

62.42 To an Oak 15 in, dia, marked J. M.
August 28th 1853.

N. 32 W.
154.00 To an Oak 16 in, dia,

N. 58 3/4 W.
74.50 At 58 chs, an Oak 18 in, dia, - a "Rodeo" bears
S. W. about 40 chs.

N. 40 1/2 W.

81.29

N. 60 1/2 W.

6.00

N. 41 W.

90.00 To a Slough, this place is called Old Em-
barcadere, thence down slough on left bank

N. 85 W.

1.55 To the tular, thence along the edge of tular.
South

23.54

West

18.85 To the post which I set on the Range line
46.80 chs, north of the corner to Sec, 19. 23.
24 & 30 in Township 2 North between Ranges
2 & 3 East of Mount Diablo Meridian on
the 25th August 1853. Thence

S. 64 W.

68.20

56

chells. Rancho de los Meganos.

N. 55 1/2 W.

73.50 At 25 chs. Adam S. Small appeared & objected to the survey on the following grounds, to wit, he claims a squatter's right to 160 acres & says he believes it to be government land. At 73.50 chs John G. Perkins appeared and made a similar objection as above.

N. 62 1/2 W.

97.00 At 5.00 chs. enter a squatter's field, at 15.00 chs leave same, at 40 chs. Jas Short appeared & objected as above, at 80.00 chs. James Gibbons appeared & objected as above, he also made a similar objection for his partner Henry S. Mogan

N. 78 3/4 W.

84.04 To the corner of the garden fence.
At 35.00 chs, Jacob Bennett & D. C. Smith appeared & objected as above, from the end of this corner the 1/4 Sec. corner between Secs, 21 & 28 bears North 80. chs Thence

N. 114 3/8 W.

41.00 At this place I intersected the left bank of the San Joaquin river, thence down stream
Aug 29th

S. 70. W.

64.00 At 2. chs, a wharf about 200 ft long, a slaughter house at the end, This place is called Marsh's landing. At this place Gilbert Leonard appeared & objected to the survey & gave the same reason that all the others gave.
At 5.00 chs, a two story house, At this place I begin to pass the Sand hills, (Meganos) it is from these that the Rancho derives the name, Rancho de los Meganos.

107 ND

PAGE 57

ch. M^o Rancho de los Migueros.
N 85 1/2 W.

120.90 To the point of the Sand hills & water garden
made by Mr. S. Fuller a tenant of Dr. Marsh's
At 115.00 chs. passed a sheep fold, 3 chs. at
the South.

S. 11. W.

221.18 at 3 chs. set post 6 inches square, 2 1/2 ft in
the ground & 2 1/2 ft out of the ground from
which an Oak 15 in, dia, bears S. 13 1/2 E. 243.
Also - An Oak 30 in, dia, bears N. 79 E. 175 M^o.
The trees are marked J. M. B. T.

The post is marked J. M. No 2.

From this post the corner to Secs, 13. 18. 19. &
24 bears S. 18° 45' W. 26. 41 chs. The post
could not be well set at the corner, therefore set
it at 3 chs. distant along this line. At 6 chs
leave garden. A house stands in the garden,
a Piggery is at the East of the garden,
At 8.50 chs. enter tular

" 8.00 " Stream 20 chs. West,

" 18.00 " leave Tular, S. E. & N. W.

" 26.50 " enter " E & W.

" 28.50 " leave same E & W.

" 100.00 " to the hills E by N. & W by S.

" 221.18 " corner on an oak 15 in, dia,
marked J. M. No 3.

The above line is supposed to be the bound-
ary between Dr Marsh's Rancho & that
called the New York Rancho.

From this corner the White
Oak Springs bears N. E. about 10 chs,
Sept 3rd 1853.

S. 27 186.

107 ND
PAGE 58

58

che Mts Rancho de los Meganos.

700.96 To an Oak 40 in, dia, for the 4th corner, marked J. M. No 4.

At 80, che, a large valley, E & W.

o 141 o top of hill.

o 158 o West water stream, 50 Mts, wide corner S. E. by E. at the foot of the hill - this valley is called the lone tree valley.

At 209. che top of hill.

o 230 o enter scattering Oak timber E & W.

o 254 o enter valley, called Home valley

o 280 o leave same.

o 325 o top of hill.

o 339 o enter deer valley.

o 394 o foot of hill & leave deer val, S. E. by E. & N. W. by W.

o 428 o top of hill.

o 439 o enter small valley

o 454 o top of ridge

o 463 o enter Pinos valley.

o 531 o top of hill.

o 650 o enter valley

o 680 o Arroyo de los Pabones, N. E. S. W.

At this time there is water in places,

The gap through which some a path bears S. 12° E. 3 miles S. 1.50. che distant from this corner.

The Cerro de la Cuaba, bears S. 45° E, 185, 60 che, nor a succession of eight hills from the gap.

The J. & S. corner in the base line between Sur, 24 35 of Range 2 East bears South 11. 67 che - thence

S. 30. W.

107.20

185.46

107 ND
PAGE 59

59

ch, lke Rancho de los Meganos.
 572.40 & set post marked J. D. N. No S. from which
 an Oak 4000, dia, beam N. 30 E. 30.50 chs,
 At 30.00 chs, road along the old path which
 path goes through the gap.
 At 80.00 Valley.
 " 110.00 foot of the hill.
 " 130.00 top of the
 " 140.00 valley.
 " 158.00 Stream of water in place, corral
 about 5 chs, North.
 183.00 chs, Sic, corner beam North 74 chs
 & leave valley.
 20000 chs, road to Stockton.

Sept 7th 1853.

This morning I find the diurnal variations
 to have changed 20'
 320.00 chs, enter the plains.
 405.00. To point of timber, most of the
 gone to the south.
 572.40 chs, to the corner.

N. 30 E.
 30.50. To the place of beginning. Aug 8th 1853.

General Description.

There is about 6000 acres of brush wood and
 sandy land on this Rancho that is altogether
 worthless. There is also 3000 or 4000 acres of
 very high & steep hills that is of but little value
 The live tree valley, the horse valley, deer
 valley, & Bruer's valley, contains most val-
 -uable land. At the Iron house is some 1st rate
 land. There is another piece of 1st rate land
 at the eastern part of the plains, near the

107 ND
 PAGE 60

Co.

timber another piece of fine land along the creek below Dr Marsh's house. The Arroyo de los Poblanos (the creek of the village) derives its name from some Indian villages which were located on this creek above where Dr Marsh lives. The stream rises in Monte del Diablo, & runs N. Easterly through nearly the centre of the farm & wastes in the Tulare. It contains living water in general places.

The Meganos / sand hills / from which the Rancho derives its name, extends from Marsh's landing to the N. W. corner of the grant about two miles, & in some places from 100 to 200 ft high & are covered with brush.

There is a Slaughter house, a dwelling house & a mill house at the landing. There is plenty of good Oak timber on a large share of the grant.

There are some springs among the hills, the most of them are saline & alkaline.

(Signed) J. E. Whitaker
Dept. Sur.

We hereby certify that we assisted J. E. Whitaker Deputy Surveyor to survey the rancho de los Meganos owned by Dr John Marsh, in the San Joaquin valley & that the said Rancho has been in all respects, to the best of our knowledge & belief, well & faithfully executed & the boundary monuments planted according to the instructions furnished by the Surveyor General.

(Signed) W. L. Hill.
Edward Price.

Sworn to & subscribed before me this 9th day of September A. D. 1853, at Porterville, Contra Costa County, Cal.

(Signed) J. E. Whitaker. Dep. Surveyor.

61

J. E. Whitcher Deputy Surveyor, do solemnly swear that in pursuance of the instructions of S. D. King, Surveyor General of the public lands of the United States in the State of California, bearing date the 24th day of May A. D. 1853 & in strict conformity to the laws of the land of the U. S. & the instructions furnished by said Surveyor General, I have faithfully surveyed the Rancho de los Meganos, situated in the San Joaquin valley & East of the (Mount Diablo meridian) in the State aforesaid, & do further solemnly swear that the foregoing are the true & original field notes of such survey.

107 ND
PAGE 62

(Signed) J. E. Whitcher. Dep. Surveyor.

Subscribed by said J. E. Whitcher Deputy Surveyor & sworn to before me at San Francisco, this 27th day of September 1853.

(Signed) S. W. Sloat. Notary Public.
U. S. Surveyor's Genl. Office
San Francisco, Cal., November 23rd 1853.

The foregoing notes of an initiating survey of the tract of land called Los Meganos, claimed by John Mark, have been examined. From the expedient in the matter on file in this office it appears that the extent & boundaries of said tract are mentioned only in the memorial of the original petitioner, but in no other instance and they stated by the proper authorities in the aforesaid expedient. According to the returns herewith made of the survey, the land mentioned comprises 52,083 ¹⁵⁷/₁₀₀₀ acres, equivalent to twelve sitios de ganadero mayor. The survey having been executed agreeably to the extent & within the notes & bounds therein mentioned is hereby approved so far only as a preliminary survey made at the request of the parties claiming the land, but not as expressing an opinion as to the merits or validity of the claim. (Signed) John C. Hayes. U. S. Sur. Genl. Cal. U. S. Surveyor Gen. Office. San Francisco, Dec 10th 1853.

The foregoing is a correct copy of the original on file in this office

62

John C. Hays.
U. S. Sur. Genl. Cal.

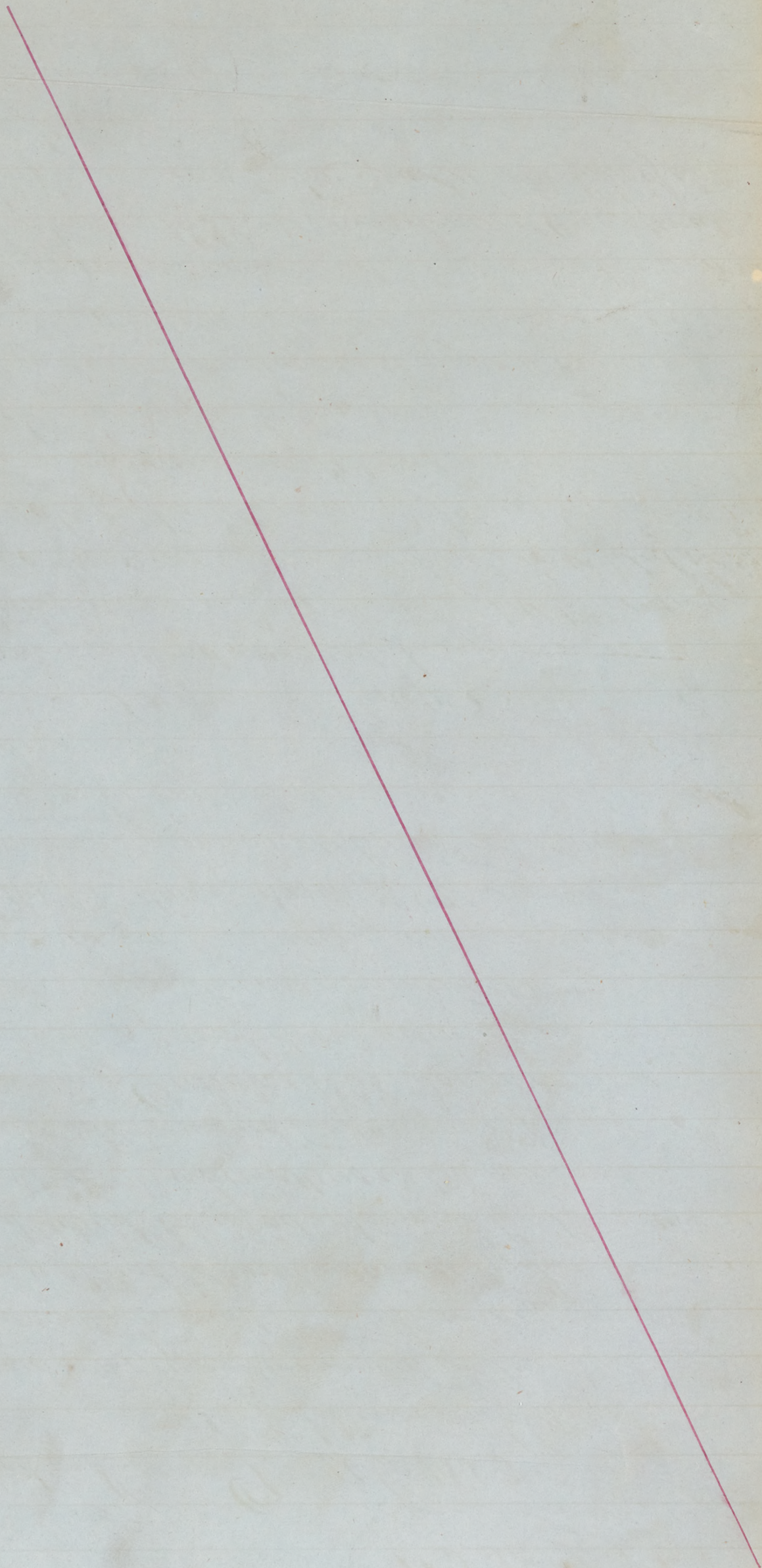
Filed in Office Dec 10th 1853.

Geo: Fisher.
Sug.

107 ND
PAGE 63

NOV

NOV 10



1871
1872

John Marsh
or
The United States.

For the place called Los
Meganos in Contra Costa
County containing twelve
square leagues of land.

Opinion of the Board by Comr Alfred Felch.

The petitioner alleges that the land claimed was originally granted to Josi Noniga and subsequently conveyed to him by said grantee. The grant is alleged to have been made by Josi Castro, Superior Political Chief ad interim on the 13th day of October 1835. It is also alleged in the petition that the grantee sold & conveyed the premises to the petitioner in the month of December 1838. A deed of conveyance of that date is presented, but a deed of release of the premises containing an avowment that such former conveyance had been made, is given in evidence, bearing date the 27th day of March 1852. This deed conveyed to the present claimant all the interest which the original grantee had in the premises at the time of its execution.

The grant to Noniga is not proved. That a grant of the land was made to him as alleged in the petition, however, is fully shown by the testimony of Noniga, the grantee whose deposition is filed in the case, & also by the testimony of James A. Forbes. The grant, it appears, was delivered by Noniga to the present claimant when he purchased the premises in 1837. The affidavit of the claimant shows that the title paper issued by the Political Chief was destroyed, by some persons who plundered his house on the premises in September 1838. The existence of the original grant, its possession by the grantee, the fact of its delivery to the present claimant & its loss or its destruction without his procurement or consent are thus fully established.

In order to determine as to the rights of parties

under it we must next inquire what were the contents of the grant. Two points as to the contents especially require consideration: the first relates to the description & quantity of the land granted; the second to the conditions imposed on the grantee. As to the latter however the proof shows a settlement upon & cultivation of the premises by the grantee immediately after the grant & a continuation of inhabitation & improvement of the place by him & the present claimant of such a character as to satisfy the terms of any of the Mexican grants made under the law of 1824 & the Regulations of 1828. We may therefore direct our attention chiefly to the question what land was in fact granted, & what are its boundaries, limits & quantity.

Unfortunately no witness speaks of the description of the land granted as specified in the grant. The claimant alleges that the land granted was four leagues from south to north & three leagues from East to West & containing twelve square leagues of land, & he presents a survey of the land claimed by him under the grant, defined with accuracy on the field notes & map of the Surveyor, & containing an area of twelve square leagues.

The evidence on which reliance is chiefly placed to show that the land thus claimed is that described in the grant is found in the expediente from the archives a true copy of which is filed in the case. The petition for the grant contains all the descriptions of the land solicited which is found in the document. The petitioner alleges that he has been seeking for some time to find out a vacant spot & has at length found a place called San Miguel the plat of which he annexed to his petition, "The boundaries of which are on the East the Indians of San Tulare - then in a straight line including

all the Call grow as far as a Tular - thence north including the creek of the Poblano, which runs through the said grove as far as the a sandy hill situated on the point of a channel (thicket) bearing North east - thence running south along the hills situated on the west as far as the mountain called the mountain de los Bulguera thence passing a little beyond the gap where crosses the path from the creek towards the sandy hills following the slope of the adjoining hills then to be run, leaving on the west the little hill called de las Cuevas, thence in a straight line between south & east until it meets the line indicated in the beginning of the delimitation of the place, the same comprising four leagues from south to North & three from east to west. Several reports giving information on the subject of the propriety of granting the grant are embraced in the expediente & among them the report of the testimony of three witnesses who speak of the extent of the land. By the largest estimate it is made to contain one league of land & by the smallest less than one & a half. The decree of concession is in the usual form, not defining the boundaries nor specifying the quantity of land granted. The approval of the Imperial Deputation which was given on the 14th October 1835, is also in the usual form & without any specifications as to the location, boundaries or quantity of the land granted. This record affords no proof of dispensation of the land which was in fact granted to Nonja.

It is the record of the proceedings to obtain a grant. It does not even show that a grant was ever delivered to the party. After the decree of concession the Governor might still refuse to issue the grant, & after the approval of the Deputation, he might still withhold it or issue it for only a portion of the summe solicited. We have uniformly held that the

Expediente, such as is here presented, is not of itself conclu-
 -sive evidence, without proof of the delivery of a grant
 to the party, that such grant was ever issued. It is equal-
 -ly ineffectual for the purpose of showing the contents
 of a grant, proved by other testimony to have been deliv-
 -ered to or in possession of the grantee. The application
 usually specifies a much larger territory than is granted
 by the Governor, & the limitation of the premises granted
 is found in one of the conditions contained in the
 grant itself, & not in the decree of concession contained
 in the Expediente or in any of the other documents
 contained in that roll of original papers. There is nothing
 in the documents which shows that the entire
 premises described in the petition of Noniga were granted
 to him, & our knowledge of the practice of the government
 as disclosed by the archives, and our extremely im-
 -probable that his grant embraced the whole. There
 is nothing to indicate that there was a grant by miles
 & bounds, & in the absence of all proof that it was so,
 we cannot make such an inference. If it was a grant
 of a specific number of square leagues of land to be
 located within the limits of the larger tract described
 in the petition for the grant, as the documents lead
 us to believe, the expediente affords no proof as to what
 that quantity was, & of course no means of determining
 what land was in fact granted. The grant itself
 in cases of this character always contains this spe-
 -cification - the Expediente seldom or never. The
 latter therefore is not evidence of the contents of the
 former.

The petitioner does not claim that this
 was a grant of the entire premises enclosed within
 the exterior boundaries mentioned in the petition
 of Noniga. He has introduced evidence of a survey
 of the premises claimed by him under the grant,

67

made by his procurement in the month of August and September 1853, together with a map of the premises & the field notes of the Surveyor. The survey purports to have been commenced on the east side of the premises described in the original petition, to have been extended thence ^{to the} north east corner thence westerwardly to the north west corner, thence along the west side southwardly until arriving at a point from which a straight line to the place of beginning would enclose in & the survey exactly twelve square leagues of land, which constitute the premises claimed. If the Surveyor's lines were extended so as to embrace the entire premises according to the principles on which his survey is founded, the whole tract would be found to contain some fifteen square leagues of land. But the principles of this survey would not in my opinion embrace all that is covered in fact by the description in the petition. A survey according to that description would I think, show that the entire premises contains some twenty or twenty five square leagues of land.

The petitioner does not claim that the whole of this land was granted. He claims title to twelve square leagues of it, segregated by the Surveyor under his direction, on the northern portion of the premises.

While neither the Expediente nor any other proof in the case, shows what land was described in the grant, there is strong, if not irresistible evidence that it was not a grant of twelve square leagues as claimed by the petitioner. The 12th Article of the decree respecting colonization of the 18th August 1824, limits the quantity of land which any one person shall be allowed to obtain to eleven square leagues & the Regulations of 1828, under which this grant was made by reference to the law adopts this limitation. The practice of the Governor of California was also so far as the

archives disclose the proceedings, kept scrupulously within the limitation. In all our examinations of case before this Commission I have seen no case in which the grant described the land granted as containing more than eleven leagues. It was contended that the waste land embraced in grant should not be included in the statement of the quantity, & therefore a grant might be for any number of square leagues of land, provided there was embraced within the limits only eleven square leagues of good land, or rather such as was described in the law. But the law in my judgment clearly limits the right of granting to the quantity of eleven leagues in all. A construction of the law has not obtained which allowed the judicial survey to embrace within the surveyed limits under grant useless land without reckoning it as part of the land granted, & giving the conceded quantity of good land together with an additional quantity of waste land (which has never yet been established before us) it certainly never was the understanding that the Governor could issue a grant for quantity specified in the concessions that to contain more than eleven square leagues. And certainly no grant was ever issued requiring the judicial survey to be made within the location designated in the concessions, as to embrace not only the maximums of eleven square leagues of available land, with a specified quantity unfit for use in addition to it. We cannot presume this grant to be of such a character, & there is no evidence to show that it was so.

I have already remarked that the proof of the contents of a grant is not expected to be found in the Expediente. When a grant once issued, ^{in fact} or destroyed, the claimant under it should

107 ND
PAGE 69

from its contents by the best evidence in his power. The 9th Article of the Regulations of 1828 requires a record to be kept in a book of petitions presented & grants made, & the archives contains the records of the grants sometimes recorded at full length & sometimes containing only a brief memorandum of their contents. To this record in my judgment, the party who has lost his grant should first resort for proof of its contents. The claimant has not sought for evidence of the contents of his grant when he had every reason to believe it would be found preserved in the national records. The legal inference is irresistible in such a case of failure to seek the best evidence thus required by law to be perpetuated that if produced it would be found to be adverse to the claim advanced in the case.

From the testimony presented in support of this claim I am satisfied that this was neither a grant of the entire premises described in the petition of Noriega (which is conceded by the claimant) nor a grant of twelve square leagues of land to be located within the boundaries of it; & the claimant has given no evidence which shows what the quantity granted in fact was. But whether the quantity granted was in truth the number of square leagues mentioned & claimed by him, or any less number, the location was evidently required to be made within the large tract described in Noriega's petition, & was, under the Mexican law required to be measured & segregated, with defined limits and boundaries, by the act of a judicial officer. This was never done & without it the rights of the party never attached to any specified portion of the public domain prior to the ratification of the treaty ofcession. After that event he could not make the location, by means of a Surveyor selected by his own choice, nor has this Commission the power of doing it for him. This principle is too well settled by the decisions of the Supreme Court

of the United States to admit of doubt, & that Commission has uniformly applied it, in all cases where the question has arisen; & it must be applied in the case now under consideration.

I must be permitted to add that since the examination of this case & since the above expression of my views was prepared I have examined the records among the Archives in the Office of the Surveyor General & find the grant which was made to Noriega recorded at full length in the regular book of Titles of the former Government. The land granted is therein specified to be a little more than three square leagues, & a judicial survey is required to separate it from the larger tract described in the petition of Noriega. This record is not in evidence before us. If it were the principle above stated would apply to the case, & would be fatal to the claim. To cite it here not as evidence, however, by which the rights of the party are to be established, but as illustrating the importance of the rule which requires the party, where such record evidence exists, to seek for it in its proper depository, instead of substituting for it unsatisfactory inferences from documents not expected to contain the proof of the fact alleged, or the fallable & often erring testimony of persons who speak from memory only.

The claim must be rejected.
Filed in Office March 14 1854. Rejected.
Geo. Fisher. Secy.

213. John Mark

Decree

The United States } In this case on hearing the proofs & allegations it is adjudged by the Commission that the said claim of the petitioner is not valid & his application for a confirmation thereof is therefore denied.

71

Alpheus Felch. }
Thompson Campbell. }
W. Aug. Thompson. } Commissioners.

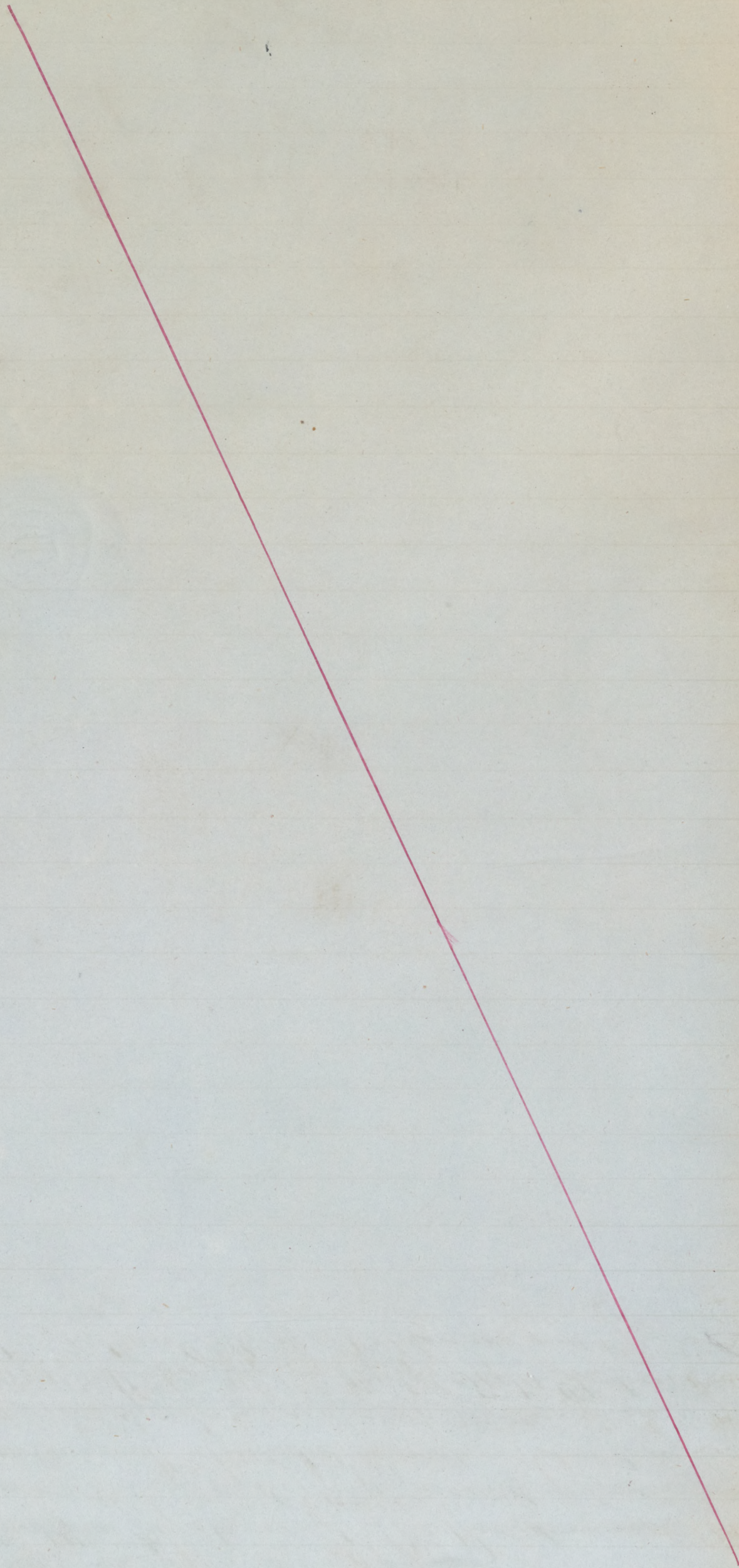
Filed in Office March 14 1854.

Geo. Fisher.
Sug.

107 ND
PAGE 72

ND

72



Small, faint markings or text, possibly a stamp or handwritten notes, located in the lower-left quadrant of the page.

72

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

107 ND
PAGE 73

1870
1871
1872
1873
1874
1875
1876
1877
1878
1879
1880
1881
1882
1883
1884
1885
1886
1887
1888
1889
1890
1891
1892
1893
1894
1895
1896
1897
1898
1899
1900

Office of the Board of Commissioners,

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

107 ND
PAGE 74

I, *George Fisher*, Secretary to the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, do hereby certify the foregoing *twenty two* pages, numbered from 1 to *72*, 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. *213* on the Docket of the said Board, wherein *John Marsh* is

the Claimant against the United States, for the place known by the name of "*Los Meyanos*"



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

G. Fisher
G. Fisher
Sic

107 ND 107

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

No. — *107* —

THE UNITED STATES,

vs. 107 ND

John. Marsh

TRANSCRIPT OF THE RECORD

FROM THE

BOARD OF U. S. LAND COMMISSIONERS,

In Case No. *213*

Filed, *November 2^d* 1854

Proctor
Club

107

107-213

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

John Marsh App^t } Case No 213 from
vs } the Docket of the Court
The United States App^{lee} } Commissioners on private land
} claims in California

107 ND
PAGE 75

Notice is hereby given to the
Appellee in the above entitled cause that it
is the intention of the said John Marsh App^t
and Claimant of the tract of land mentioned in
his petition to the Board of Land Commissioners
Appointed by the President of the United States to
ascertain & settle private land claims in the
State of California by the Act of March 3^d 1851 -
to prosecute an appeal from the decision &
Decree of said Commissioners as made & entered
in the above cause a transcript of which
has been duly filed in this Hon^{ble} Court -

John Marsh
By his Attorney
San Francisco April 24. 1855 - James Wilson

To John A. Mouroe Esq
Clerk of the U.S. District Court for the
Northern District of California

No ~~213~~ 107

Notice of Appeal in
the above cause from
the land commissioners
Decree.

John Marsh App^t
vs

United States App^{ee}
vs

Filed April 26⁽²⁶⁾ 1855
J. H. Brown
Clk.

Notice of Appeal

107 ND
PAGE 76

One



107 ND
PAGE 77

The United States of America.

United States
District Court, for the
Northern District of California—

John Marsh Ap^l
Ads.

Case
No 213 from the
U. S. Land Court vs
Docket.

The United States Ap^l

To the Hon^{ble} Ogden Hoffman
Judge of the said District.

The Petition of
John Marsh of Contra Costa County in the
State of California, respectfully represents to
your Honor that on the 4th day of May A.D.
1852 he filed his claim for a certain tract of
land in Contra Costa County aforesaid before
the Commissioners appointed by the President of
the United States under the act of Congress
Approved on the 3rd day of March A.D. 1851 entitled

"an Act to ascertain and settle private land claims in the state of California". That the said land so claimed by your petitioner is and for a long time has been known and called the Rancho "de los Meganos" and is in extent about four leagues in a northerly and southerly direction a little more or less in its longest lines, and about three leagues a little more or less, in its breadth in an easterly & westerly direction, reference to be had to the papers, expediente documents transcripts and proofs on file for a more full & perfect description of the boundaries of the land claimed by your petitioner and which he prays may be taken and deemed as a part of this petition for that purpose among others -

Your Petitioner avers that the said Rancho "de los Meganos" ^{lies &} is situated within the Northern District of California - to wit, in the said County of Contra Costa. Your petitioner sets forth the nature of his claim and derivation of his title to said land and Rancho "de los Meganos" as follows to wit -
First - A grant or concession of said Rancho "de los Meganos," by Don Jose Castro Superior Political ^{chief} and Governor ad interim of California under and by the Authority of the Mexican nation to one Don Jose Norriega, bearing date on the 13th day of October A.D. 1835, -

Second The approval of the Departmental Assembly of California to said grant or concession, given on the 15th day of October A.D. 1835 -

Third A purchase of said Rancho by your petitioner from the said Don Jose Norriega about the month of December A.D. 1838 for a good and valuable consideration which purchase was ^{there} perfected by the making & delivery of a deed, by said Norriega, to your petitioner, and also by the delivery, by said Norriega to your petitioner, of the Original Deed of grant or

received by him, said Norriega, from the Mexican authorities then in California of the Rancho aforesaid & which said original papers were subsequently stolen from a trunk in the dwelling house of your Petitioner on said Rancho by a band of robbers about the year 1840-

Fourth A Deed of release made and executed by the said Don José Norriega and Donna Manuela his wife dated on the 7th day of March A.D. 1852 to your petitioner ratifying and confirming the said conveyance made by the said Don José Norriega to your petitioner in the year 1838 and releasing ^{to him} all their right & title in said Rancho

Your Petitioner further represents that it is clearly and conclusively shown by the evidence taken before the said Commissioners in the said cause No 213 that the said Don José Norriega took possession of the said Rancho "de los Meganos" and the lands composing the same immediately after the said grant or concession thereof was made to him, (to wit,) in the year 1835, that he built a house thereon and occupied the same in person and by himself his labourers & servants - that he placed and reared thereon cattle, horses & other stock and continued so to occupy the same ever thereafter until he sold the same to your petitioner in the year 1838 - that ever since the date last mentioned your petitioner has constantly and still does live upon, occupy and maintain his possession of said Rancho with his family

That for many years (to wit) from the year 1838 until the year 1846 the possession of your petitioner of said Rancho was quiet, peaceable, uninterrupted undisturbed and unquestioned during the whole period of the continuance of Mexican rule and authority in California - except in the single instance of the robbery of his house as above set forth -

Your Petitioner further represents that a full transcript of the Documents, testimony, proceedings, records, orders and decrees of the said Board of Commissioners in said Cause, together with the final Decree of said Commissioners rejecting his said claim to said Rancho "de los Meganos" and the lands composing the same and all and every part of the said lands as will ^{more fully & at large} appear, by reference to the Opinion in writing of said Commissioners filed in said Cause on the ground of indefiniteness of the description of the boundaries ^{thereof} was filed with the Clerk of this Honble Court on the 2nd day of November A.D. 1854 as required by the Statutes of the United States in such ^{cases} provided, and from which said decision, Opinion and decree of said Board of said Commissioners Your Petitioner files this petition ~~apresenting~~ for a review thereof by Your Honor, avowing said Decree to be erroneous.

Wherefore the said John Marsh the claimant aforesaid prays Your Honor, Judge of the District Court aforesaid, to review the said decision and decree and the proceedings had before said Commissioners and to reverse the said final decree of said Commissioners, and to pass upon the validity of your petitioners claim to the said "Rancho de los Meganos" and the lands pertaining thereto, and to confirm his claim thereto as good and valid — and for other relief. And as in duty bound will ever pray

John Marsh

By James Wilson
his Attorney —

San Francisco
April 24th 1855,

No 107

John Marsh ^{appts} Ad

The United States -

Said Cases No 213 from
the Com^{rs} Docket -

Petition for Review.

Filed April ⁽²⁶⁾ 26. 1855
J. A. Moore
clerk.

107 ND

PAGE 81

two

James Wilson
Claimant's Attorney

UNITED STATES DISTRICT COURT,
Northern District of California.

John Marsh,

— as —
The United States.

San Francisco, Sept: 26th 1855.

107 ND
PAGE 82

ON this day, before *John A. Murre* a
Commissioner of the United States for the Northern District of California, duly
authorized to administer oaths, &c., &c., came *Ignacio Cyprian*
a witness produced on behalf of the
Claimant

in Case No. *107*, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. *213* on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows — his evidence being interpreted by *H. Adler* a sworn interpreter.

PRESENT: *James Wilson, Claimants Atty,*
and the U. S. District Attorney by
A. Glassell. Esq.

^{1st}
QUESTION BY Claimant.

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

Answer.

Ignacio Cyprian, 34 years of age, and
reside in Contra Costa County, Cal.
I am a farmer by occupation, or a
raucher.

Question 2^d

Do you know the place called "Los
Meganos" in Contra Costa County.

Answer.

I do, I have known it for the last twenty
years, I reside within five, or six leagues
of this place, I have lived in its vicinity
all my life.

Do you know the person who first occupied the said Rancho, de los Megavos, if yea, state who.

Answer.

It was first occupied by Jose Corriega a Spaniard, Jose Romero was on the place at the time as over-seeer or major domo, Jose Corriega was on the place some three, or four years before the revolution of Micheltorena.

4th

How long did Corriega reside on this place, and what was his business.

Answer.

He was there about two years, he was a Ranchero, taking care of cattle, and cultivating land.

5th

Who followed Corriega in the occupation of this Rancho.

Answer.

Mr Marsh, the present claimant, who has lived on the place ever since Corriega left, and lives there now.

6th

State what you know relative to the said Rancho de los Megavos as occupied by said Corriega, and Marsh, and your means of knowledge.

Answer.

As to the boundaries of said Rancho, I know them, the North, or North Western boundary is, on the San Joaquin River, at the point of "Los Megavos" or the Sand Hills, thence in the direction of a

107 ND
PAGE 83

mountain, called Golgones, now known
as ~~Motudiablo~~. Thence in the direction
of a small hill, called "Las Cuevas," thence
towards the Sular to the end of the oak
grove, thence along the edge of the river
or the overflowed land to the place of
beginning. I received my information from
Salvio Pacheco, Antonio Mesa, and Jose
Miguel Garcia, who were colindantes
or owners of the lands adjoining
the tract in question.

Qth

Were you ever called upon to trace any
part of the boundary line between the
Las Mieganos, ranch, and the Rancho
of Mesa, and Garcia. If yes, state when,
and at whose request.

A^{ns}wer,

at the time when Salvio Pacheco, Antonio
Mesa, and Jose Miguel Garcia, wished
to make a Petition for their land, they
invited me to ~~be a Justice of the Peace~~
with them, ~~to go with them~~ to see
the land, I went. When we got on the
ground, they began to run the line at
the point, which I have before mentioned,
"Las Mieganos," on the river. ~~Salvio Pacheco~~
~~said that the land on~~ When we got
to this point, we stopped where a con-
versation ensued in regard to the
boundary of Noriega's ranch, which
was then possessed by Doct. Marsh,
Salvio Pacheco said that the land

up the river from this point belong-
-ed to Wriega, or Marsh, and that
~~they~~ then Mesa, and Garcia said
they would take their land down
the river.

8th

Have these boundaries of the Rancho
"Los Megavos," ^{as you have above stated them} been recognised by the
neighbors, or colindantes as the true
boundaries of "Los Megavos,"

Answer,

They have been, and are now known
of my own knowledge from what I have
before stated, and from conversations
of the adjoining neighbors.

9th

Witness is here shown the map attached
to the manuscript in this case, and says
the boundaries of said rancho as laid
down on said map, are correct,

Cross examined by U. S. Attorney,
1st.

State by what means you know that
the boundaries on the said map, are
correctly laid down,

Answer,

I know it from the neighbors having told
me they were correct, and I know the
land as well as though it were my own
house, and I know all the points on

The Map.

The Map.

Q^d

Do you know whether or not said
Map is a correct representation of
the country round about said Rancho,
and if so, state how you know it, +
^{all the means upon base of knowing it}

Answer,

107 ND
PAGE 86

It represents exactly the outlines
of the rancho, or exterior boundaries.
I recognize the said Map as being
correct by the ~~San~~ "Miguel", which is
on the borders of the River. By the mountain
ridges, or sierra on one side, by the line
of the river marked on it, by the Tular,
by the "Quevas".

3d.

Have you any interest, direct, or indirect
in the event of this claim,

Answer,

I have none whatever ^{his}
Ignacio J. Lyprian
mark

I sworn to + subscribed
before me this 26. Sept. 1855.

Ignacio J. Lyprian

M. S. Courrier.

No 107
U. S. Dist. Court,

John Marsh,

vs

The United States.

Deposition of
Ignacio Espirian,

Took Sept 26. 1855.

by Cheever
Deputy,

107 ND

PAGE 87

three

United States of America

District Court for the Northern District
in the State of California

107 ND

PAGE 88

John Marsh Aptm

District Court Docket
No. 107

vs

The United States Apt^{ee}

Com^{ry} Docket
No. 213

And now the Attorney
of the United States as also James Wilson Attorney for
the Claim of the Aptm in said Cause come and
suggest to the Honble Court here That since the
filing of the Transcript in the above cause in this
Court by the Secretary of the Board of Land Commissioners
=ers, and since the filing of the Claimants petition
in this Court for a revision of the decree of said
Commissioners and a reversal of said Decree. The
said John Marsh the Original Claimant has
Deceased - And it being stipulated by the said
Attorney of the United States And by James Wilson
Attorney for said Claim That the Cause aforesaid
shall be revived & prosecuted to final Decree in
the name of Alice Marsh the heir at Law
and only child of the said John Marsh

original claimant deceased-

Wherefore Application is made to the Hon^{ble} Judge of the said District Court of ~~the~~ for an Order reviving the said Cause in the name of the said Alice Marsh heir at law & only child of the said John Marsh deceased and that the said Cause may be prosecuted in the name of the said Alice Marsh to final Decree according to said Stipulation

107 ND
PAGE 89

San Francisco Jan^y 7. 1857

Wm Standing
Dist Atty
James Wilson
Atty for Claimant

United States of America - District Court
for the Northern District of the State of California

It being suggested to the Court by the Attorney of the United States and also by James Wilson Attorney for the claim in Cause No 107 on the Docket of said Cases in this Court - That John Marsh the original Claimant has deceased since the filing the Transcript and the petition for rehearing in the above cause - And it having been stipulated by & between the said Attorney for the United States & the said Attorney for the said Claim That the said Cause shall be revived and prosecuted to final Decree in the name of Alice Marsh heir at law and only child of the said original Claimant deceased as set forth

in the foregoing stipulation—

Now therefore it is hereby Ordered
and Decreed That the said Cause be revived
and that the same may be prosecuted to final
Decree in the name of Alice Marsh heir at
Law & only child of the said Original Claimant
accordingly—

Agda Hoffman
U. S. District Judge

107 ND
PAGE 90

107 ND

No. 107.

W. S. Ditt: Court.
The United States,

-as-

Alice Marsh,
Wife of John Marsh,

Step: and order
reviving suit in
name of only heirs.

Filed July 8, 1857,
W. S. Cheves,
Deputy Clerk.

107 ND

PAGE 91

four

In the District Court of the U. States
for the Northern Dist of Cal.

The United States of
vs
John March 2 N.C. 107: L. C. 213

107 ND
PAGE 92

The United States
by their Attorney deny the validity
of the title set out in the petition
of the appellant and pray that the
decision of the United States Land
Commission be affirmed, and that
the said title be decreed invalid,

San Francisco Feb 12, 1857

Wm Blanning
W. S. Atty.

107 ND

107

U. S. Dist Court

The United States

vs

John Marsh

Answer

Filed February 12, 1857.

W. H. Chubb,

Deputy.

107 ND

PAGE 93

five

Wm Blandin
U. S. Atty

101.02
José Castro Vocal of the most Excellent
Territorial Deputation Political Chief ad in-
terim of Upper California.

107 ND

PAGE 94

Whereas Don José Noriega for the personal benefit of himself and his family has made application for the tract of land known by the name of Sos Meganos: the appropriate proceedings and proofs having been previously taken in accordance with what is provided by the laws and regulations, in use of the powers conferred upon me, in a decree of October ^{13th} of this year, and that of the Most Excellent Deputation of the 15th of the same month and year, and in the name of the Mexican Nation, I have come to grant to him the tract of land mentioned, declaring him the owner thereof in property by the present letters, and under the conditions following:

1. That he shall submit himself to those which may be established in the regulation that is to be formed for the distribution of vacant lands, and in the mean time neither the grantee nor his heirs shall have power to divide or to alienate that which is adjudicated to them, nor impose thereon quit rents, entailment, security, mortgage, nor any other incumbrance even though it be for pious uses, nor to transfer it in mortmain.

2. Hee is empowered to inclose it without prejudice to the Croppings, roads, and services; he shall enjoy it freely and exclusively, destining it to the use and cultivation which may best suit him, but within one year at most he shall build a house, and it shall be inhabited.
 3. Let the judge give him the juridical possession in virtue of the Despatch by whom the boundaries shall be marked out in which boundary lines they shall place, besides land marks, some useful fruit and forest trees.
 4. The tract of land of which donation is made, is a little more than three sitios de ganado mayor as explained by the map (diseño) which is contained in the Espediente. The judge who shall give possession will cause it to be surveyed according to ordinance, the overplus (sobrante) which may result remaining to the nation for the uses convenient. 5. If he contravene these conditions he shall lose his right to the land, and it may be denounced by another.
- Wherefore I Command that these presents serving him as a title (titulo) and being held firm and valid, record thereof be made in the corresponding book, and the same be delivered to the party interested for his security and other ends.

Given in Monterey Dec. 2. 1835.

José Castro

Francisco del Castillo Negrete Secretary

Castillo

(rubric)

n^o 107

U.S. Dist Court
Northern Dist Cal

Alice Marsh

by

The United States

Translation of

Doc. X. (Titulo)

Filed May 2, 1857.
W. H. Chewers,
Deputy.

107 ND

PAGE 96

Shaw

MAY 2 1857

39.
1
Don Juan Cortés vocal a la Santa Diputación Territorial i' Leje
Político interior de la Alta California.

97

107 ND
PAGE 97

En cuanto a Don José Soriga ha pretendido por su ve
neficio personal i' el a su familia de terrenos conosci
dos con el nombre de la Mégano: practicados previamente
en diligencias i' abrogaciones convenientes según lo dis
puesto por Ley i' Reglamentos: usando a las facultades
seg. que son conexas en secreto y taise y de taise
de un año, i' el de la Santa Diputación a 15 de mi
no mes i' año i' a nombre de la Nación Mexicana
he venido en considerar el terreno mencionado de la
manera la propiedad de él por las presentes letras i'
bajo las condiciones siguientes.

1.^a Que se someta a los Reglamentos de Reglaman
to q' se ha de formar para la distribución de terrenos baldíos,
i' q' entre tanto ni el agraviado ni sus herederos podrán di
vidir ni enajenar el q' si la justicia imponerá un ven
culo fianza hipotecal ni otro gravamen alguno sea
por causa placada ni parante a mano muerta.

2.^a Podrá ser usado sin perjuicio las traversas cami
nos i' servidumbre de disfrutarse los ríos i' esclusiva
mente destinándose al uso i' cultivo q' mas lo acomode
de p' dentro de un año a lo mas fabricar casa i'
estara habitada.

3.^a El Dize q' le de la posesión jurídica en vir
tud de este Despacho p' el cual se demarcaran los
límites en cuyos límites pondrán a mano las Meho
rias algunas arboles frutales i' vitícolas o alguna
utilidad.

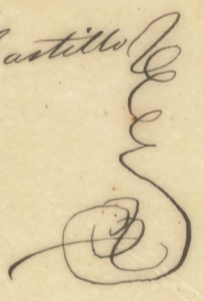
4.^a El terreno seg. que ha de ser vendido a se por

mas en sus sitios a ganando mayor segun es
 plica de sus q. con el de la siguiente.
 El diez q. tiene la posesion lo han me
 ten conforme a ordenanza quedando de so-
 brante q. remite a la misma p. la vez
 convenienter.

107 ND
 PAGE 98

5ª Si contraviniese a estas condiciones por
 sus sus dichos al término de una denuncia
 de p. otro.

En consecuencia mando q. se remita a
 título de parente i tenedores p. firme
 i calidad de tome razon a los de los
 correspondientes i se entregue al interino
 q. p. su lugar i demas p. de
 en Montevideo a los 20 de Mayo de 1765. Yo
 Castro = Juan de Castillo Segura
 Srio. Castillo



I hereby consent that this traced
copy may be filed and used in evidence
in this case. May 2. 1857.

Wm Blanding
Dist Atty

Doc Mt No. 107

L. C. U. S. Dist Court, Wash Dist.

Alice Marsh

by

The United States

Doc. X. (Titulo).

Filed May 2. 1857.
W. H. Cheever,
Deputy.

107 ND

PAGE 100

Doc

Dr Marsh \$5.00

Leonard

Alicia March

vs

The United States

No. 107, 84.

ND

April 9th. 1858.

The claim in this case is for a tract of land called "Los Meganos" granted to Jose Noriega Oct. 13. 1835 and approved by the Departamental Assembly Territorial Representation Oct. 15. 1835 - The final document or titulo is dated December 2^d of the same year -

The original grant was not produced to the Board nor was any satisfactory evidence of its contents given

The expediente however containing the petition informs the decree of Concepcion & was found duly archived and on these documents together with parol proof that the ^{titulo} grant had in fact issued the claimant asked for confirmation

In his petition Noriega sets out

107 ND

PAGE 101

The boundaries of the land solicited with some particularity and states its extent to be four leagues from South to North and three from East to West.

107 ND
PAGE 102

It was not however contended before the Board. Inasmuch as the decree of conception & the approval of the Deputation showed that the land of "Los Gregarios" had been granted it was contended that the lost title must have embraced the land solicited in the petition. It was not however urged that all the land embraced within the boundaries had been granted, the claim was confined to a tract of 12 square leagues which had been at the instance of the claimant surveyed by the Surveyor General.

By this survey the former last line which enclosed the rancho had been so run as to include the precise quantity

of ~~four~~¹² leagues. Had the
 Surveyor's lines been extended
 so as to embrace the ^{existing}
 track according to the ^{principles on which the}
~~survey~~^{survey} ~~found~~^{found} ~~in~~ⁱⁿ the petition
 the land would have been
 found to be about 15 square
 leagues in extent - A survey
 according to the description
 contained in the petition would
 it is observed by Mr. Combeson
 Telch embrace some 20 or 25
 square leagues of land -
 Since the cause has been
 pending on appeal the origin-
 al record of the title has
 been produced from the Ar-
 chives which it is set out
 at length.

By the 4th condition states
 the contents extent of the granted
 land to be a little more
 than 3 square leagues and
 it contains the usual direction
 for a judicial measurement
 and a reservation of the
 sobrante -

It is urged that this limitation should be disregarded as having been repugnant to the clear ^{obvious} intention of the grantor and probably introduced by mistake -

107 ND
PAGE 104

It is not perhaps very clear what the claimant supposes himself entitled to - Whether he contends that the grant should be treated as a grant by metes and bounds and the whole tract embraced within the boundaries mentioned in the petition should be confirmed to him, or whether ~~as~~ to the extent of 20 or 25 leagues, or whether as he appears to have admitted before the Board, ~~the~~ he should be restricted to the quantity of 12 leagues according to the survey by procured to be made -

Stamps

It is presumed however that independently of the limitation contained in the fourth condition, it would not be contained

5

that the Governor could have intended to grant ^{a tract of} ~~15 or 20 or 25~~ leagues when the petition in extent when the petition himself stated it to contain only 12 leagues and I offer the witness a much smaller quantity. And such seems to have been the view taken of the grant by the Council for the claimants. ~~It~~ ^{the grant} cannot therefore be treated as a grant by metes and bounds, and the only question which of the specifications of quantity shall govern that contained in the petition or that contained in the grant.

It is urged that the Governor by granting in his decree of concession, and the Deputation by confirming the title to "Los Mezanos" clearly indicated their intention to grant the tract as described in the petition — and of the extent therein mentioned ~~but this argument is now over~~

107 ND
PAGE 105

6

not as we have seen be sus-
 tained - In ~~in~~ such case
 the Governor if ~~in~~ for it cannot be
 supposed that by the use of
 the name Los Negros the
 Governor intended to refer to
 a tract ~~greater than~~ ^{the} greater
 extent than was ~~represented~~
 by the petition and the wit-
 nesses -

107 ND
 PAGE 106

Had the boundaries of this
 tract been found to embrace
 only the quantity stated in the
 petition, had the ~~whole~~ attention
 of the Governor been particularly
 directed to the question of its ex-
 tent, had he been apprised of
 its extent by the testimony of
 witnesses, and with all these
 facts before him revealed in
 his conception, and in the title
 the specific boundaries as set
 forth in the petition, and had
 the Deputado Deputacion confirmed
 with ^{by} ~~express~~ reference to those
^{boundaries} we might have supposed
 as in ^{the case of} ~~the~~ Pacheo's case

4
that the limitation in the
condition was the result of
a clerical error. Provided
that in attributing to the Governor
the intention to grant by metes
and bounds we did not sup-
pose him to have exceeded
the quantity of 11 leagues to
which his granting power was
limited.

107 ND
PAGE 107
But in this case the proceedings
show that ~~the~~ in all probability
the limitation in the condition
was ~~but~~ accurately expressed
the intention of the Governor
and of the assembly.

The Petition was referred to the
Alcalde of the Capital to take
information by the oaths of three
competent witnesses as to the
qualifications ~~of~~ of the petitioners
and the extent and character
of the land.

One of them states that the
tract petitioned for, may be
3 leagues long and in width
from 2 leagues to less than $\frac{1}{2}$

a league

The 2^d witness states its extent to be about 2 and a half or three leagues in length and from one half to two leagues in width —

107 ND

PAGE 108

The 3^d witness states it to be 4 or 5 leagues in length and three in breadth —

It thus appears that by the evidence of two out of three witnesses the Governor and the Deputation were apprised that the ~~contents~~ ^{of "La. Megano"} extent of the land ~~granted~~ was about 3 leagues — When therefor they granted the land by that name it is as at least as probable that they intended a tract of the extent sworn by the two witnesses, as ~~of~~ ^{of} that sworn the large extent sworn to by the third, or ^{as} represented by the Petition — When therefor the Governor directs ~~in~~ the grant the said

9

The limitation in the condition of the grant removes all doubt upon the subject and clearly unequivocally expresses ^{the} intention which ~~is~~ ^{without} ~~to~~ ^{attributed to} we ^{might} well have supposed the grantor to have

107 ND

PAGE 109

The claim to 12 leagues rests entirely upon the supposition that the Governor intended by the term "Los Meganos" a tract of the extent represented by the petitioner — But when we find him apprised informed by the depositions of two witnesses that the land of that name only included about three leagues, there is surely as much reason to suppose that he meant a tract of the smaller extent as of the larger —

But ~~what~~ there is there for nothing repugnant to the apparent intention of the Governor or the deputation in the introduction of the limitation of quantity in

The fourth condition - nor can I perceive on what grounds the Court would have been authorized to strike from the grant so important a part of it -

107 ND
PAGE 110

As the grant can in no case be deemed a grant by metes and bounds, the words "a little more ^{than}" which precede the ~~recitation~~ the words "three leagues" are not susceptible of any definite meaning construction - They were probably inserted as an authority to the Judicial officer slightly to increase the quantity for convenience of boundary or similar reasons - As no such discretion can be confided to the Surveyor General the words must be rejected for uncertainty and the claimant confined to the precise quantity of 3 square leagues to be located within the boundaries described in the petition - in the form & divisions prescribed by law for

11

Surveys in California and
embracing the entire grant in
one tract

April 9, 1858

107 ND

PAGE 111

107

Alice March

vs

The United
States

Opinion

April 9. 1858

Filed April 9. 1858.

W. H. Chew.

Clerk.

107 ND

PAGE 112

10

At a Stated Term of the District Court of the
UNITED STATES OF AMERICA, for the Northern District of
California, held at the Court Room, in the City of SAN FRANCISCO,
on *Monday* the *25th* day of

October in the year of our Lord one thousand
eight hundred and fifty-seven. *eight.*

Present:

The Honorable OGDEN HOFFMAN, District Judge.

107 ND

PAGE 113

The United States

v.

Alice Marsh, heir at
law of John Marsh, decd.

D.C. 107. L.C. 213.

In this case, on application
of P. Della Torre Esq, U. S. Attorney, it is ordered
that an appeal in behalf of the United States
from the final decision of the Court rendered
in said cause at the ~~December~~ ^{this day} 1857 term, be
and the same is hereby granted, and that a
certified transcript of the pleadings, evidence,
depositions and proceedings in the said cause be
sent to the Supreme Court of the United States
without delay; and the appellants are ordered
to serve the usual citation according to law.

Ogden Hoffman
Dist Judge

107

United States District Court, Northern District of
California.

The United States

vs.

Alice Marsh

ORDER.

granting appeal

Filed *October 25, 1858*

W. H. Clevers

CLERK.

: 107 ND

PAGE 114

By

DEPUTY.

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

Alice Marsh

vs

The United States

Docket No. 107.

Transcript No. 213.

Sated Term April 9th. 1858.

107 ND

PAGE 115

This cause coming on to be heard on appeal from the decision of the Commissioners to ascertain and settle private land claims in the State of California under the act of Congress approved March 3rd 1851. upon the transcript of proceedings decision of said Commissioners and the papers and evidence upon which said decision was founded, all of which have been duly returned and filed in this Court, as required by law, and upon further evidence taken under the orders of this Court, and Counsel for the respective parties having been heard; on due Consideration had, it is by the said District Court now here, ordered, adjudged, and decreed, that the decision of said Board of Commissioners be, and the same hereby is reversed; And it is further ordered, adjudged, and decreed, that the title and claim of the above named Alice Marsh to the land claimed in this case to the extent of three square leagues as herein-after specified is good and valid, and the same is hereby confirmed to her. The land of which Confirmation is hereby made is a part of the tract known by the name of "Los Neganos" situated in Contra Costa County, and the same which was granted to José Noriega, by the

Political Chief of the Territory of California in a decree of Concession dated Octo. 13th 1835, approved by the Territorial Deputation by a resolution dated the 15th of the same month the final "Titulo" for which was issued under date of December 2nd 1835, which tract of land is more particularly bounded and described in the petition of said José Noriega, to the Political Chief dated July 24th 1835, and the diseños or map accompanying the same contained in the Expediente, on record in the Public Archives, a traced copy whereof is given in evidence, and contained in the Transcript in this Case, to all which said paper reference is hereby expressly made, Provided that Confirmation is hereby made of the quantity of three square leagues only or three Sitios de ganado Mayor to be laid off and located within the boundaries described in the aforesaid petition and diseños or map, so as to include the dwelling house and improvements of the late John Marsh, the original claimant in the case, the said land to be surveyed in the form and divisions prescribed by law for surveys in California, and in one entire tract.

John Hoffman
J. S. Dist. Judge

No 107

United States District Court

Alice Marsh

vs

The United States

Decree

Filed Oct: 25, 1858,
W. H. Cheverus,
Clerk.

107 ND
PAGE 117


The United States of America,
To Alice March, heir at law of
John March, deceased,
Greeting:

107 ND
PAGE 118

You are hereby cited
and admonished to be and appear at a Supreme
Court of the United States, to be holden in Wash-
ington on the first Monday in December next,
pursuant to an order of appeal granted ^{on} the
~~twenty second~~ ^{fifth} day of ~~August~~ ^{October} A. D. 1858, by the District
Judge of the District Court of the United States for the
Northern District of California, in a certain suit
wherein the United States are plaintiffs and
you are defendants on appeal, to show cause,
if any there be, why the decision in the said
appeal mentioned should not be corrected,
and speedy justice should not be done to the
parties in that behalf.

Witness my hand and seal at San
Francisco this ~~twenty second~~ ^{fifth} day of ~~August~~ ^{October} in
the year of our Lord one thousand eight
hundred and fifty eight

Edwin Hoffman
U. S. Dist. Judge



United States Marshals office
Northern District of California

I hereby certify that this Citation was received
on the 25th day of October 1858. and that
on the 27th day of October I served a copy
of this Citation personally upon James
Wilson Attorney ^{for claimant} in the City of San Francisco
and at the same time exhibiting the
Original Citation in this Cause
San Francisco Oct 27th 1858.

P. L. Solomon

U. S. Marshal

By John H. Williams

Deputy Marshal

107

U. S. District Court.

The United States

v.

Alice Marsh

Citation

Due service of copy
within citation by U. S.
Marshal admitted this
day of 1858.

Filed October 28th 1858.

P. H. Chenevix
Clerk

107 ND
PAGE 119

San Francisco

At a Stated Term of the DISTRICT COURT OF THE UNITED STATES OF AMERICA, for the Northern District of California, held at the Court Room in the CITY OF SAN FRANCISCO, on Monday the third day of June in the year of our Lord one thousand eight hundred and sixty one

Present:

107

ND

The Honorable OGDEN HOFFMAN, District Judge.

PAGE 120

The United States

v.

Alice Marsh

No. 107

L. C. 215.

And now at this day come W. H. Sharp Esq, U. S. Attorney and the above named claimant by her attorney; and on presenting the mandate of the U. S. Supreme Court by which it appears that the final decree here of this Court heretofore entered in favor of the claimant was affirmed; now therefore on motion of W. H. Sharp Esq, U. S. Attorney, It is ordered that the said mandate be filed by the clerk, and that the claimant have leave to proceed under the said decree of this Court in her favor as under final decree.

Ogden Hoffman
Dist. Judge

107.

UNITED STATES DISTRICT COURT
Northern District of California.

The United States,

v.

Alice Marsh,

Order to file
Mandate U. S.
Sup. Court.

Filed June 3rd. 1861.

W. A. Chewey,
Clerk.

107 ND

PAGE 121

[Faint, illegible handwritten text, likely bleed-through from the reverse side of the page.]

[Handwritten notes or signatures in the right margin.]

[Faint, vertical text on the left margin, possibly bleed-through or a stamp.]

UNITED STATES OF AMERICA, SS.

THE PRESIDENT OF THE UNITED STATES OF AMERICA,

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

107 ND
PAGE 122

greeting:

Whereas, lately, in the District Court of the United States, for the Northern District
of California before you, _____ in a cause
between Alice Marsh, appellant, and The United States,
appellees, the decree of the said District Court was in the
following words, viz:

"On due consideration had, it is by the said District
Court now here ordered, adjudged and decreed, that the decision of said board
of Commissioners be, and the same hereby is, reversed; and it is further
ordered, adjudged and decreed, that the title and claim of the above
named Alice Marsh to the land claimed in this case to the extent of
three square leagues, as hereinafter specified, is good and valid, and the
same is hereby confirmed to her. The land of which confirmation is
hereby made is a part of the tract known by the name of "Los Meganos,"
situated in Contra Costa County, and the same which was granted
to José Noriega by the Political Chief of the Territory of California, in a decree of
concession dated October 13th, 1835, approved by the territorial deputation
by a resolution dated 15th of the same month, the final "título" for which was
issued, under date of December 2^d, 1835; which tract of land is more par-
ticularly bounded and described in the petition of said José Noriega to
the Political Chief, dated July 24th, 1835, and the diseño or map ac-
companying the same, contained in the expediente on record
in the public archives, a traced copy whereof is given in
evidence and contained in the transcript in this case, to all
which said paper reference is hereby expressly made; Pro-
vided that confirmation is hereby made of the quantity of
three square leagues only, or three sitios de ganado mayor, to

be laid off and located within the boundaries described
in the aforesaid petition and ^{or map,} disem^r, so as to include the
dwelling house and improvements of the late John Marsh,
the original claimant in the case; the said land to be
surveyed in the form and divisions prescribed by law
for surveys in California, and in one entire tract."

107 ND
PAGE 123

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 nine* 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.*

20 Feb.

107 ND
PAGE 124

1859

Handwritten notes in cursive script, possibly a signature or date, including the word 'February'.

Faint vertical text, possibly a date or reference number.

1859

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

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

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

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

Executed by James S. Carroll
Clerk of the Supreme Court of the United States.

No. 103, December Term, 1859.
No. 107.

MANDATE
SUPREME COURT UNITED STATES.

M. State vs. Mark.

filed June 3rd 1861
Wm. A. Cheever
Clerk

107 ND
PAGE 125

No. 1

ads } Los Mejanos

Marsh

Claimants Brief.

107 ND

PAGE 126

ND 107
PAGE

107 ND

PAGE 127

UNITED STATES DISTRICT COURT.

ALICE MARSH,
vs.
THE UNITED STATES.

} DOCKET No. 107.
CLAIMANT'S BRIEF.

The claim in this case is for the tract of land in Contra Costa County, called "Los Meganos," granted to Jose Noriega, Oct. 13, 1835, confirmed to him by the Territorial Deputation Oct. 15, 1835, (Record, p. 31, 41), the final title issued Dec. 2, 1835, (see Doc. X. and its translation filed in evidence in this court), and by Noriega conveyed to John Marsh, in the year 1837 or 1838 (see Dep'n of Noriega Record p. 8 and Deed of Confirmation p. 43.) Doct. Marsh having died, by stipulation the cause is revived in the name of Alice Marsh his only child and heir at law.

The title is in every respect complete and perfect, although strange as it may seem, it was rejected by the Land Commissioners previous to the decision of the Supreme Court in the case of Fremont. The proceedings preliminary to the grant are marked by the most scrupulous observance of the Mexican laws and regulations on the subject, and the actual personal residence, occupancy and cultivation of the whole tract granted, by Noriega, and his grantee Doct. Marsh, have been continuous and uninterrupted up to the time of Doct. Marsh's death. The original title issued to Noriega and

his deed to Doct. Marsh were stolen and destroyed in the year 1838, (see Record p. 6). But the issuing of the original title is amply proved (Record p. 8) as well as the conveyance to Doct. Marsh in 1837, and a deed of confirmation from Noriega was given in evidence before the Commissioners and is found in the Record, p. 43.

The only question which will be raised, it is presumed, will be whether the confirmation should be for the place by boundaries, or whether it should be limited to a specific quantity within those boundaries in consequence of the 4th condition carelessly inserted in the final title.

It will be observed that Noriega in his petition to the Governor dated July 24, 1835 (Record p. 33), asks for the place called "Los Meganos," represents that it is "four leagues from north to south, and three leagues from east to west," and says that it is bounded east by the "Indians of the Tulares, and thence by a right line all along the Roblar (oak groves) to a *tular*; then turning and crossing the creek of "*Los Poblanos*, which passes through the same oak grove, and running to a *megano* (sand hill) which is at the point of a *chemisal* which lies to the north-west. Then continuing from this point towards the south all along the hills (*lomas*) which bear to the south-east unto the mountain which they call (the mountain) of *Los Bulgones*, and passing on a little beyond the *Porto suelo* where the path crosses which runs from the arroyo to the *Meganos*; thence descending the neighboring hill (*loma*) which will be observed there, the *cerrito* named *Las Cuebas* remaining within (the boundaries), another will be a right line from the south (or along the south side) to east until it intersects that which was indicated at com-

mencing the delineation of the tract (*sitio*), all which consists of four leagues from south to north, and three from east to west." The landmarks thus specified are delineated on the *diseño* or map in the *Expediente*. (Record p. 25-26.)

This is the *sitio, terreno*, or tract of land called "Los Meganos" petitioned for by Noriega. He asked for the tract thus described, about four leagues long and three broad, which, as it was not of perfectly regular shape, would not necessarily contain over eleven square leagues. He did not ask for a specific quantity of land but for a certain tract by name and boundaries, presenting a map to describe it more exactly. The petition was referred to the Ayuntamiento of San Jose for information, which body reported favorably upon it, without however making any reference to the quantity which the tract might contain (Record p. 34-5). Subsequently the subject was referred to the Alcalde of the Capital to take the usual information by the oaths of three competent witnesses (Record p. 26, 36), which order was duly executed. One of the witnesses says that the extent of the tract petitioned for may be three leagues long, and in width varying from two leagues to less than half a league (Record p. 28, 38); another gives nearly the same opinion as to the quantity (Record p. 30, 39), but the third, Salvio Pacheco by name, who as the documents show was much better informed on that point, says that the tract is four or five leagues long, and three leagues broad (Record p. 30). This is found in the original on the page here referred to, but is omitted in the translation on page 39-40.

It will be observed :

1. That these witnesses were giving their *opinions*

of the extent of a certain tract of land with fixed natural boundaries (probably with the map contained in the *Expediente*, (Record p. 25-26) before them), situated at a distance of one hundred and fifty miles from the place where their depositions were taken.

2. That Noriega in his application to the Governor gave a true account of the extent of the tract described in it, so that no misrepresentation on his part is chargeable.

In a decree of the 13th Oct. 1835 (Record p. 30, 40), the Governor in view of the petition, information, "and all else proper to be considered," declares the citizen Don Jose Noriega "owner in fee simple (propriedad) of the tract of land known by the name of '*Los Meganos*,'" and directs that the *corresponding despacho* (or final title), shall issue. On the 15th of the same month, this decree was confirmed by the Territorial Deputation in the following terms: "The grant made to the citizen Jose Noriega of the tract of land known by the name of '*Los Meganos*,' conceded on the 13th Oct. 1835, is approved." (Record p. 31, 41.)

It was upon the rendition of this decree of the Deputation that the grant to Noriega became "definitively valid" by Art. 5th of the Regulation of 21 Nov. 1828, and his right to the land became fully vested, and no further discretion remained with the Governor over the subject; but it was his *duty* by Art. 8th of the said Regulation to cause a *document* to be issued, which should serve as a *titulo*, that is, a document corresponding to the concession as approved; not in order to confer any right of property, for that was complete and perfect when, by the approval of the Deputation, the concession already made became definitively valid, but in order that the party interested might have in his

possession authentic *evidence* of his right of property. It will not certainly be alleged that a concession of land once approved by the Deputation could be *augmented* by the sole act of the Governor, much less by any mere inadvertence of a Clerk or Secretary, and therefore for precisely the same reason the quantity granted and thus approved could not be diminished. The decree of concession and the approval of the Deputation contain no limitation of quantity, but grant just what was petitioned for. The tract of land known by the name of "Los Meganos," was granted and confirmed—the boundaries of that tract were described in the petition of Noriega, and in the *diseño* contained in the *Expediente*. (See Record p. 25–26.) To this place and the descriptions thus given, the decree of concession, the approval of the Deputation, the *informes* of the Ayuntamiento, of the Father of the Mission, of the Alcalde and witnesses, all have reference. The *Expediente* is one entire record or document, in which are contained all the requisites of a perfect grant, and complete title, under the Mexican laws and regulations, and nowhere in it is there any evidence of an application for, or a grant of a specific *quantity* of land, but on the contrary it is clear that the application and the grant and approval, were for a certain tract by name, with fixed and specified boundaries, without any limitation of quantity except that imposed by law.

Six weeks after the grant to Noriega was approved by the Deputation, and thus became definitively valid, a document was issued for his security, as *evidence* of his right to the land previously granted, and pursuant to the 8th Article of the Regulation of 21 Nov. 1828—a copy of which from the public archives, duly certified by the Surveyor-General (the original being lost),

is filed in this court, marked "Doc. X." with translation. This is what is usually denominated the "final title." It is signed by the Governor, as required by said Article 8th, but in all probability was never read by him or even by the Secretary, whose signature is attached to it also. It is drawn according to the formula generally used at that date, and contains the five so called "conditions," which appear to have been mechanically inserted in titles of all descriptions, without the necessary discrimination and without reference to their applicability.

It is however respectfully submitted, that this document reasonably construed, contains nothing which is in conflict with what has been said above, or which can impair the claimant's right to have a confirmation of the *whole* tract called "Los Meganos," according to the boundaries described in the petition and map contained in the *expediente*.

This document recites, that whereas Jose Noriega has "made application for the tract of land known by the name of *Los Meganos*," etc., thus referring to his petition and the boundaries there given, in order to identify and describe the land—"In a decree of October 13th of this year, and that of the Most Excellent Deputation of the 15th of the same month and year," etc., "I have come to grant him the tract of land mentioned, declaring him the owner thereof in property by these letters," etc.—thus showing that the land referred to is the same that was granted and confirmed by the decrees of 13th and 15th October—no more, and no less; and showing moreover that it was by the decree of 13th October that the grant was made, which became perfect by the approval of the 15th of the same month; for it will be also recollected that by

the very words of that decree, Noriega is declared to be "owner in property" of the tract called "Los Meganos," and the same declaration contained in "the present letters" is intended to evidence a right previously existing. But however that may be, the land referred to is clearly shown to be the *same* in all respects with that before granted and confirmed, and it is evident that there is no intention to change or modify that previous concession in any particular.

But there are certain "conditions" put, and among them the following, which is not properly a condition:

"The tract of land of which donation is made, is a little more than three *sitios de ganado mayor*, as explained by the map which is contained in the *expediente*," etc. Thus showing again by express reference to the map in the *expediente*, that there is no intention to restrict the grant to any quantity less than that described in the map; but on the contrary, that the land referred to is identically the *same* in quantity and boundaries as that described by Noriega in his application and accompanying *diseño*, (or map,) and granted in the decree of concession of 13th October. But an erroneous *recital* is inserted respecting the quantity which that tract contained—"a little more than three *sitios*, etc., as explained by the map." The map has no scale of distances, but it has fixed natural landmarks designating the boundaries as described in Noriega's petition. The recital as to the extent of the tract is thus proved to be a *clerical* error of no importance. In the Governor's decree of 13th October, the Deputation's of 15th of October, the final title of 2d December, and especially the so-called 4th condition, in the depositions of witness before the Alcalde, and the depositions taken in this cause, (record p. 14, etc.,) the boundaries

described in Noriega's petition and the map in the *Expediente*, are recognized as the true boundaries of "Los Meganos" as granted to, and occupied by, Noriega and his successor in interest. But the land is to be "surveyed according to ordinance," and the "overplus which may result is to remain to the nation," etc., so says the condition. What land? The tract called *Los Meganos* was to be surveyed according to the boundaries given in the *Expediente*, the petition and map being regarded as a part of the grant itself. If it were not surveyed according to those boundaries, it would not be in accordance with, but would be in violation of, the ordinances on the subject of *medidas agrarias* or land surveys. The landmarks mentioned in the petitions and rough maps upon which original grants were made in new and uninhabited districts, would be sufficient guides to a surveyor in running the lines. But an actual survey would be necessary in order to extend the lines upon the ground all around the tract. This would especially be necessary as the adjoining lands became occupied, and the county should become populous, in order to fix the boundaries at every point with precision, inasmuch as the natural landmarks referred to in the original papers do not cover the whole circumference of the tract. The overplus or *sobrante* would be all the lands previously occupied by the grantee which might fall without the lines of the survey thus made according to ordinance.

In the present case, the extent of the land and boundaries were not misrepresented, but were truly indicated to the Governor and Deputation by Noriega in his petition and accompanying map. Two of the witnesses examined before the Alcalde gave an erroneous estimate of the extent of the tract, but the estimate

given by the third corresponds with the statement contained in Noriega's application. They all however speak with reference to the same land, the same boundaries, and the same map of it contained in the *Expediente*. The estimates of the witnesses are not very important. The *representation* made by the petitioner, if false, would be material in some cases, and might vitiate a grant or decree founded upon such false representation. But in this case no such objection exists. The boundaries and extent of the land were truly represented by the petitioner, and the grant was made accordingly.

As observed by this Court in the case of the United States *vs.* Rosa Pacheco, if it was the intention of the Governor when he made the decree of Concession, and of the Deputation when they approved it, to grant the tract called *Los Meganos* as described in the petition and delineated on the *diseño*, then the final title issued with an express reference to, and in avowed conformity with, the decree of concession, and resolution of approval, should, if possible, be so construed as to give effect to it. "The inquiry therefore is, did the Governor intend the fourth condition to limit the quantity of land granted, or is the mention of quantity to be treated as merely a misdescription of the extent of the land, which should, as at common law, yield to boundaries when the latter are distinctly mentioned, and when such construction is necessary to give effect to the intention of the parties." Admitting therefore for the sake of argument, that a *definitively valid* grant in fee simple duly made, approved, and recorded in the archives of the government, might be varied by the Governor alone, or by his Secretary, or some heedless *escribiente*, it is respectfully submitted that the references contained

in the final title issued to Noriega, evince, in the clearest manner possible, the intention to adhere in every particular to the terms of the original decree of concession, and of the approval by the Territorial Deputation.

It may not be deemed altogether irrelevant to add, that Dr. Marsh, one of the first American Pioneers in California, to whom we are indebted in no inconsiderable degree for the acquisition of the country, has, as the evidence shows, actually occupied the whole tract under the boundaries claimed for upwards of ten years previous to the treaty of *Guadalupe Hidalgo*.

HORACE HAWES,

Of Counsel for Claimant.