CASE NO.
170
NORTHERN DISTRICT

EL PESCADERO GRANT

ANTONIO MARIA PICO, ET AL.

CLAIMANT

LAND CASE 170 ND pgs.99





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267

170 ND
PAGE 1

# TRANSCRIPT

OF THE

# PROCEEDINGS

## IN CASE

NO. 267.

Antonio Maria Pico, et. al, CLAIMANTS.

VS.

THE UNITED STATES, DEFENDANT,

FOR THE PLACE NAMED

"El Pescadero"

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

*The Petition of* Antonio Maria Pico, et al: *for the Place named* "El Pescadero" *was presented, and ordered to be filed and docketed with No.* 267, *and is as follows, to wit;*

*(Vide page* 3 *of this Transcript.)*

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

Los Angeles, October 8th 1852.

In Case No. 267, Antonio Maria Pico, et al: for the place named "El Pescadero," the deposition of Santiago Argüello, a witness in behalf of the Claimants taken before Commissioner James Wilson, with document marked J. W. No. 1 annexed thereto, was filed;

(Vide page 5 of this Transcript.)

San Francisco January 15 1853.

In the same Case the deposition of Antonio Señol, a witness in behalf of the Claimant, taken before Commissioner Harry I. Thornton, was filed;

(Vide page 5 of this Transcript.)

San Francisco, Sept. 13 1853.

Case No. 267 Called: on motion of the Counsel for the Claimants, ordered to the foot of the Docket.

2

San Francisco June 20 1854.

Case no. 267, on motion of the Counsel for the Claimants, was ordered to be placed at the foot of the Calender of the 1st. Class cases on the Trial Docket.



San Francisco Aug. 17 1854.

Case no. 267 was submitted without argument.

San Francisco, Sept. 19 1854.

In the same case Commissioner S. B. Fawcett delivered the opinion of the Board rejecting the claim:

(Vide page 25 of this Transcript.)

And the following order was made, to wit;

(Vide page 26 of this Transcript.)

3 Petition

170 ND
PAGE 4

To the Honorable Commissioners to Settle Private Land Claims in California.

The petitioners Antonio Maria Pico and Henry M Naglee respectfully shows

That on the 28th of November A.D. 1843 Manuel Micheltorena Governor of California by virtue of authority in him vested, granted to One of the petitioners, Antonio Maria Pico, the tract of Land called "El Pescadero" situated in the present County of San Joaquin and containing Eight Square leagues of Land more or less, with the boundaries set forth in the title and respective Map, all of which is shown in the Espediente a certified copy of which is submitted herewith Marked "A" with a translation marked "B". The petitioners also submit herewith a copy of the title issued to the said Pico Marke "C" with a translation marked "D"

And the petitioners further show that on the 25th day of April A.D. 1849 the said Antonio Maria Pico and wife, sold and conveyed to the said Henry M Naglee One undivided half of the said tract of Land, a Copy of which Conveyance is submitted herewith Marked "E"

And the petitioners further show that the said tract of Land has not been surveyed by the Surveyor General of the United States, but that its boundaries are fully described in the grant and map and are well known;

That the said Pico has been for some ten years and the petitioners now are, in the possession and occupation of the said tract of Land

That they know of no conflicting claim; That they rely for Confirmation of title upon the Original documents, Copies of which are submitted herewith, upon the records and memorials in the Archives now under the Charge of the Surveyor General; And upon such Other and further proofs as they may be advised are necessary

Wherefore they pray the Commissioners to confirm to them the aforesaid tract of Land

Filed in Office June 10th 1852
Geo. Fisher Secy

Recorded in Record of Petitions Vol. I Pages 135
Geo. Fisher Secy

4

5-

No. 267
Deposition of
S Arguello

170 ND
PAGE 5

Office of the U. S. Land Commission Los Angeles
Oct. 8th 1852.
On this day before James Wilson One of the Commissioners for ascertaining and settling private Land claims in California Came S. Arguello a Witness produced in behalf of the Claimants Antonio Maria Pico and Henry M Naglee whose petition is No 267 on the Docket of the Board and was duly Sworn his evidence being given in Spanish was interpreted by the Secretary — The Law Agent of the United States was present by R Greenhow Esq and did not Object
1 Question — What is your name age & place of residence
Answer — I reside near the port of San Diego and have lived in California all my life
2 Question — Examine the Document before you marked S.W. No. 1 and say whether you are acquainted with the signatures, and whether the document is genuine
Answer. I have examined the document marked SW No. 1 and am acquainted with the signatures of Manuel Micheltorena & Manuel Jimeno; their signatures to this document are genuine and the document itself to the best of my knowledge & belief is also genuine
Oct. 8th 1852 S Arguello
Subscribed & Sworn to
Before me James Wilson Com.
Filed in Office Oct. 8th 1852
Geo. Fisher Secy
Recorded in Ev. B. Vol 2 p 64 Geo. Fisher Secy

Depo of
Antonio Sunol —

San Francisco Juny 15th 1852
On this day before A. J. Thornton Com. Came Antonio Sunol a Witness in behalf of the claimants Antonio Maria Pico and Henry M Naglee petition No. 267 and was duly sworn his evidence being interpreted by the Secretary — (The U. S. Law Agent present)
My Name is Antonio Sunol, My age 55 years Resides in San Jose and have lived in California for 35 years
I know the Rancho called "El Escorpion" which was granted to Antonio Maria Pico in 1843 — It is situated on the San Joaquin river — Soon after Pico received this grant he prepared to remove his cattle on this Rancho, but the Indians became hostile about this time and murdered Gulnar's Mayordomo on the other side of the river — and prevented Pico from settling on his land — From this time until 1848

6

and 1849 the Indians continued hostile and robbed the Ranchos even down to the Valley of San Jose In 1847 troops were sent out against them, but they continued their depredations until after the discovery of gold in 1848

Antonio Suñol

170 ND
PAGE 6

I have no questions to ask on the preceding

R Greenhow Asst Sub Agent U.S.

Sworn to & subscribed
Before me this Jany 15th 1853
Harry I Thornton Comr

Recorded in Ev. B Vol 2 p 437

Geo. Fisher Secy

"A."

1844.

Espediente

Promovido por el Ciudadano Antonio Maria Pico en solicitud del parage nombrado el Paso del Peseadero.

370.

Sello Cuarto Dos Reales.
Habilitado provisionalmente por la Aduana Marítima del puerto de Monterrey, en el Departamento de las Californias, para el año de mil Ochocientos cuarenta y tres.

Micheltorena. Manuel Castañares.

(Seal) Sor. Prefecto del 1er Distrito.

Antonio Mª Pico, natural de este Departamento ante V.S. respetuosamte digo: que en la Solicitud que acompaño marcada con nel me mevvano sente por una equivocacion que el terreno que en ella pretendo nombrado el Pescadero es colindante con el perteneciente à Dn Juan Sutter y en consecuencia V.S. decrete informar este Sor. y siendo que el mismo terreno que pido esta inmediato al pueblo de San José dirijí al Sor. Subprefecto de aquella cabecera la instancia que tambien adjunto y apareciendo en ella sin informe verdadero favorable à mi pretension he de meneser de V.S. que sirviendose revocar su espresado decreto se digne igualmente manifestar al Superior Gobierno del Departamento el parecer destido para que se me conceda en propiedad segun las leyes el terreno referido del que ajecto in cullo el diseno correspondiente. Y por tanto A V.S. suplico acda a mi presente de lo cual recibiré Gracia y Justicia Juramento lo necesario. S.

Monterrey. Novre 20 de 1843.

Antonio Mª Pico.

Sor. Srio. del Despacho.

Don Antonio Maria Pico, Mejicano por nacimiento pretende en este Espediente el terreno nombrado el Pescadero en estension de ocho Sitios de ganado Mayor inmediato mas que a otro Pueblo al de San José: esta Prefectura habia dispuesto que Don Juan A. Sutter informase a cerca de dicho terreno en virtud de Considerarlo colindante a el: mas resultando que el Sor. Pico se equivoco en sentarlo asi en la instancia que V.S. me paso y consta en esto Espediente, y que presenta la que hizo al Sor. Subprefecto del espresado Pueblo quien informa hallarse baldio el mismo terreno y no pertenecer a corporacion ni particular alguno no encuentra embarazo esta Prefectura en que se le conceda al interesado los referidos Sitios que solicita si el Supr Gobno del Departamento lo creyere de Justicia.

Monterrey. Novre 21 de 1843.

José R. Estrada.

Exmo. Sor Gobernador.

Por los informes que aparesen en este Espediente, resulta que el terreno pretendido esta valdio y no pertenece á Mision, Pueblo ni particular alguno; y aunque hay otra Solicitud, haviendo la misma pretension y esta corriendo sus tramites, pero esta tiene la antiguedad: mas V. E. dará la de terminacion que crea combeniente.

Monterey. 21 de Xbre. de 1843.

Manuel Jimeno.

Monterey. Novre 21. de 1843.

La Sria. Concluidos que sean los tramites del otro Espediente relativo presentará los dos para resolver. Micheltorena.

Sello Cuarto Dos reales.

Habilitado provisionalmente por la Aduana Maritima del puerto de Monterey en el Departamento de las Californias para el año de mil ochocientos cuarenta y tres.

Micheltorena. Manuel Castañares.

(Seal) Exmo. Sor. Gobernador.

Gobierno politico de Californias. } Antonio Maria Pico, Mejicano por nacimiento y residente en el Pueblo de San José de Guadalupe ante V. E. como mas haya lugar en derecho compareso y digo: que teniendo un numero bastante considerable de Ganado Mayor y Caballada y deseando fomentarlo. Solicito el que V. E. tenga a bien ampliar me el derecho del paraje nombrado el Pescadero; que se halla en la inmediacion del rio de S. Joaquin, colindante con los SS. Dn Juan Bautista, Dr Guillermo Gulnar Dr Juan Juan Nashe y Don José Noriega, dicho paraje se conoce valdio y sin pretendiente alguno, y se compone de ocho sitios de Ganado Mayor segun demostrará el diseño que para mi seguridad deberé formar, si se me concede el paraje bajo mencion en este. Por tanto a V. E. rendidamente suplico se digne acceder a favor del interesado, gracia que imploro, y cuando no ser de malicia y lo necesario.

Se Translation "B"

Pueblo de S. José. Octubre 4 de 1843.

Antonio Mª Pico.

Como dispone el E. S. Gobernador pasa la antecedente y instancia al Sor. Prefecto del primero Distrito para que se sirva informar sobre el contenido de ella, y despues

Monterey. Octe 9. de 1843.
Ynf. el S. Srio del Despacho
lo cuando ante los que
necesite.
Micheltorena.

dirija la al encargado de Justicia del Distrito del Sacramento y concluido que sea todo, buelva a esta via para cumplir con lo prevenido en el Superior decreto dicha fha. de hoy.

Monterey. Obre. 7 de 1843.

Manuel Jimeno.

Informe. = El Sor. encargado de Justicia del Establecimto de Nueva Helvetia Don Juan A Sutter, si el terreno que se presenta se halla baldio con las demas explicaciones de estilo. Prefa del Primer Distrito.

Monterey. Obre. 13 de 1843. Estrado.

Monterey. Febero. 19 de 1844.

Cítense á los ciudadanos Pico que esta aqui y á Valentin Higuera y Rafael Soto para ver ese una Conferencia antes el Gobierno si para el bien comun de ellos, si convienen en q. se les conceda el Pescadero en compañia, ó partiendolo al empres con la condicion que espresa. el Mb. R. P. en el informe que dió al memorial de Higuera y Hels. = adjunto en este Espediente.

Michelltorena.

Sello Quinto Medio Real.

Habilitado provicionalmente por la Aduana Maritima del puerto de Monterey, en el Departamento de las California, para el año de mil ochocientos cuarenta y tres.

Michelltorena. Manuel Castañares.

Sor. Sub. Prefecto.

Aduana Ma de Monterey. } El ciudadano Antonio Maria Pico Vecino del Pueblo de San José ante V. como mas haya lugar se presenta y dice: que en virtud del decreto que el Sr. Gefe Superior se ha servido espedir en la Solicitud que tenga hecho del parage nombrado el Pescadero afin de que pase, hasta con el Capitan Sutter a pedir informe del espresado terreno y como con siderro inutil esta diligencia por estar muy distante de aquel establecimiento y en tal caso adonde corresponde informar es a esta Jurisdicion del pueblo de San José y no aquella como dejo dicho. por lo que Suplico V. se sirva efectuar lo asi, pa precaver todo trastorno o atraso que pueda suceder. Por tanto. A V. Suplico se digne tener en consideracion lo que dejo es puesto y dar su disposicion segun fuesse conveniente.

S. Jerera. 8 de novre de 1843.

Antonio Ma Pico.

41

Pueblo de S. José. Febro. 10 de 1843.
En quanto a el Informe que pido la parte debo decir que el terreno que Solicita se alla distante del establecimiento del Sacramento como Veinte y cinco leguas Colinda con Don Juan Mars, con el rio de S. Joaquin con D. José Noriega y Vista de la Mision de San José como doce leguas; por lo que se resolve reconocio baldio y no haber ningun impedimento para poderse le concedir
Y a peticion del interesado le di el presente en dho. Pueblo fha ut. supra. Sunol.



267

Ahora follows a Mars folio

12



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 Departamento of Upper California, do hereby certify that the twelve preceding and hereunto annexed pages of tracing paper numbered from One to twelve inclusive and each of which is verified by my initials (SDK) exhibit true and accurate copies of certain Documents on file and forming part of the said archives in this Office.

In testimony whereof I have hereunto signed my name, officially and affixed my private Seal (not having a Seal of Office) at the City of San Francisco Cal. this 20th day of March 1853.

Samuel D King.
Surv.r Gl Cal.a

Filed in Office. June. 10th. 1852.

Rev. Fisher.
Secy.

Translation of Espediente

13

"B."

170 ND
PAGE 13

Monterey Oct 7 1843
Let the Secretary of State report calling for such information as he may need
(Signed) Micheltorena

Stamp Fourth Two Reales

Provisionally authorized by the Maritime Custom House of the Port of Monterey in the Department of the California for the year One thousand Eight hundred and forty three —

(Signed) Micheltorena (Signed) Manuel Custamares

Seal of Monty Custom House

Seal of the Govt. of A. Cal

To his Excellency the Governor:

I Antonio Maria Pico a Mexican by birth and resident in the Pueblo of San Jose de Guadalupe, before your Excellency as I best may in Law, appear and say: That owing to sufficiently large number of large cattle & horses, and desiring to increase them I pray your Excellency to have the goodness to extend to me the right to the place named "El Pescadero" situated in the neighborhood of the town San Joaquin, adjoining those of Don Juan Sutter, Don Guillermo Gulnac, Don Juan Mashe, and Don Jose Noriega — said place is known to be vacant and without any claimant and contains Eight square leagues as will be shown by the map, which for my security I will form if the place I have mention is granted to me

Wherefore I earnestly request your Excellency to have the goodness to accede this favor to the person interested as right which I implore, swearing that I do not act with evil intent, and whatever else may be necessary

Pueblo of San José Oct. 4. 1843

Signed Antonio Ma Pico

As directed by the Sr's Excellency the Governor, let the foregoing petition be referred to Sr's Senor the Prefect of the first District, that he may be pleased to report upon its contents, and afterwards transmit it to the person charged with the administration of Justice in the District of Sacramento, and all this being finished let it be returned to this Secretary's Office for the purpose of complying with the requirements of the Superior decree of this date —

Monterey Oct 7 1843 — (Signed) Manuel Jimeno

Let the person charged with the administration of Justice of the Establishment of Nuevo Helvetia Don Juan A Sutter, whether the land petitioned for is vacant with the other explanations in the usual form

Prefecture of the First District Monterey Oct 12. 1843

(Signed) Estrenero

Monterey Feby 13. 1844

Let citizens Pico, who is here and Valentin Sequeno and Rafael Feliz, be summoned to a conference before the Governor, to see if for their common good they can agree in having (the Land) of "El Pescadero" granted to them in partnership, or dividing it, but always with the condition specified by the M. R. P. in the report made by him on the Memorial of Sequeno and Feliz annexed to this Espediente.

(Signed) Mechelorena

Stamp Fifth. Half a Real

Provisionally authorized by the Maritime Custom House of the Port of Monterey in the Department of the California, for the year Eighteen hundred and forty three.

(Signed) Mechelorena  Signed Manuel Castanares

Monterey Custom H.

To the Sub Prefect

Citizen Antonio Maria Pico resident of the Pueblo of San Jose, before you in the manner most favorable present myself and say: that in virtue of the decree which His Excellency the Governor has been pleased to issue in the petition which I have for the place named "El Pescadero, that it should be referred now to Captain Sutter, to request information as to the aforesaid lands; and as I consider this trouble unnecessary, as it is far distant from that place; and in this case it belongs to the jurisdiction of the Pueblo to Report, and not to that as I have begun stated; for which reason I pray you to have the goodness to do so in order to avoid any confusion or delay which might happen.

Wherefore I pray you have the goodness to take into consideration that which I have stated and make such disposition as you may think proper.

Santa Teresa Nov. 8th 1843 (Signed) Antonio Ma. Pico

Pueblo of San Jose Nov. 10. 1843

In reference to the report which the party (petitioning) requests, I have to say: that the land petitioned for is situated about thirty five leagues from the Establishment of Sacramento and is bounded by Don Juan Marsh, by the River San Joaquin by Don Jose Noriega, and is distant about twelve leagues from the Mission of San Jose; for which reason it is known to be vacant, and there there is no objection to its being granted, and at the request of the person interested I gave him this in the said Pueblo date as above

(Signed) Sunol

15

170 ND
PAGE 15

Stamp Fourth Two Reals
Provisionally authorized by the Maritime Custom House of the port of Monterey, in the Department of the California for the year Eighteen hundred and forty three —
(Signed) Mechelena  Signed Manuel Castañares

Monterey Custom H.

To his Honor the Prefect of the 1st District
I Antonio Maria Pico native of this Department before your Honor respectfully say: that in the petition which which I transmit I said by mistake that the Land which in it I asked for named "El Pescadero" is bounded by that belonging to Don Juan Suñer and in consequence your Honor ordered that gentleman to report, and being that the same land which I request is near to the Pueblo of San Jose, I transmitted the petition which I also annex to the Sub prefect of that "Cabecero", and as there appears in it a report favorable to my request, I have to  that your Honor will revoke the aforesaid order, and also have the good nep to make known to the Superior Government of the Department, your Opinion in the Customary form in order that the place referred to may be granted to me in fee, according to law for which purpose I enclose the corresponding map of it —
And therefore I pray your Honor, accede to my present request by which I will receive favor & Justice
Everything whereon may be necessary
Monterey Nov. 20. 1843 (Signed) Antonio Ma Pico

To the Secretary of State
Don Antonio Maria Pico, a Mexican by birth, petitions in this Espediente, for the Land named "El Pescadero" in extent Eight Square leagues, nearer to San Jose than to any other Town; This Prefecture had ordered that Don Juan A Suñer should report relative to said Land as he was considered as a "Colandante", but as it turns out that Senor Pico was mistaken in to stating in the petition which you referred to me & which appears in this Espediente, and he presents that (report) which was made by the Sub prefect of the aforesaid Pueblo, who states that the land referred to, is vacant, and does not belong to any Corporation or individual, and this Prefecture finds no Objection to that being granted to the person interested the number of Leagues he petitions for if the Superior Department

11

170 ND
PAGE 16

Government should think it just.
Monterey Nov. 21. 1843.
(Signed) Jose R. Estrada

To His Excellency the Governor

It appears by the reports which are seen in this Expediente, that the land petitioned for is vacant, and belongs to no Mejicon, pueblo or individual whatever and although there is another petition, requesting the same, and going through the initatory steps, yet this has the priority: Nevertheless your Excellency will make such decission as you may see fit.
Monterey Nov. 21. 1843
(Signed) Manuel Jimeno

Monterey Nov. 21. 1843
The initatory measures of the other Expediente relative to this matter being finished the Secretary will present the two that I may decide
(Signed) Micheltorena

Filed in Office June 10th 1852
Geo. Fisher
Secy

17.

170 ND
PAGE 17

Original Grant.
marked.
"Doc. I. W. no. 1
annexed to depo: of
S. Argüello."

Sello Primero Ocho pesos.

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

Micheltorena. Manuel Castañares.

(Seal) Manuel Micheltorena, General de Brigada del Ejercito Mejicano, Ayundante General de la Plana Mayor del mismo, Gobernador Comandante General é Inspector del Departamento de las Californias.

Por cuanto el Ciudadano Antonio Maria Pica, ha pretendido para su beneficio personal y el de su familia el parage conocido con el nombre de Pescadero, por la parte de abajo, colindante con el Rancho de Dn Juan Maer, con el de Dn José Noriega, con Buenos Ayres al paso del Pescadero y el Rio: practicadas previa-mente las diligencias y averiguaciones consernientes segun lo dispuesto por leyes y reglamentos: usando de las facultades que me son conferidas á nombre de la nacion Mejicana he venido en concederle el terreno mencionado, declarandole la propiedad de él por por las presentes letras, sujetandose á la aprobacion ó desaprobacion de la Sama. Asamblea Departamental y bajo las condiciones siguientes.

1a No podra venderlo, enagenarlo, ni hipotecar lo imponer censo, vinculo, fianza, hipoteca ni otro gravamen alguno.

2a No impedira el cultivo y demas beneficios que han disfrutado y disfrutan los Indigenas de San José ni los que actualmte se hallan establecidas.

3a Podra cercarlo sin perjudicar las haciendas caminos y servidumbres: lo disfrutará libre y esclusivamte destinandolo al usó o cultivó que mas le acomode pero dentro de un año fabricará Casá y estará habitada.

4a Solicitará del Juez respectivo que le dé la posecion Juridica en virtud de este despacho por el cual se demarcaran los linderos en cuyos limites pondrá á mas de sus mojoneras algunos arboles frutales ó silvestres de alguna utilidad

5a El terreno de que se hace donacion es de ocho sitios ó poco menos de Ganado Mayor segun esplica el diseño respectivo. El Juez que diere la posecion lo hará medir conforme á ordenanza, quedandole el sobrante que resulte á la Nacion para los usos convientes.

6. Si contraviniere á estas condiciones perderá su derecho al terreno y será denunciable por otro.

18



En Consequencia mando que sirviendole de título el presente y teniendose por firme y valedero se tome razon de el en el Libro respectivo y se entregue al interesado para su resguardo y demas fines. Dado en Monterey a veinte y ocho de Noviembre de mil ocho-cientos cuarenta y tres.

Manuel Michelltorena.

Manuel Jimeno. Secr.

Queda tomada razon de este ~~Depart~~ Dispacho en el Libro respectivo a fs. 3. Vo.

Jimeno.

Filed in Office. Oct. 8th 1852.

Geo. Fisher.

Secy.

19

20

170 ND
PAGE 19

Translation of "Doc. I. W. no. 1 annexed to depo. of S. Argüello."

Stamp First Eighte Dollars

Provisionally authorized by the Maritime Custom House of the port of Monterey in the Departmente of the California for the year One thousand Eighte hundred & forty three (Signed) Micheltorena (Signed) Manuel Castañares

Monterey Customs

Manuel Micheltorena General of Brigade of the of the Mexican Army Adjutant General of the Staff of the Same Governo, Commanding General and Inspector of the Departmente of the California —
Whereas Citizen Antonio Maria Pico, has for his own person & benefit and that of his family, petitioned for land known by the name of "El Pescadero" bounded on the lower side by the Rancho of Don Juan Marsh, by that of Don Jose Noriega by "Buenos Ayres" at the pass of El Pescadero" and by the River; the proper measures and Examinations being previously made as required by laws and regulations: using the faculties Conferred on me in the name of the Mexican Nation I have granted him the aforesaid Land, declaring to him the Ownership of it by these presentes subject to the Approval or disapproval of the Most Excellent Departmental Assembly and under the following Conditions —
1st. He may not sell alienate or Mortgage it subject it to any tax, entail pledge Mortgage or other incumbrance
2d. He will not prevent the cultivation and other benefits which have been and are enjoyed in it by the Indians of San Jose and those actually established there
3rd. He may enclose it without prejudice to the crossings roads and servitudes and enjoy it freely and Exclusively making such use & cultivation of it as he may see fit but within One year he shall build a house on it and it shall be inhabited
4th. He shall request the proper Magistrate to give him juridical possession in virtue of this title by whom the boundaries will be marked out, in the limits of which he shall place besides the bounds some fruit or forest trees of a useful Character
5th. The Tract of which Donation is made is Eight Square Leagues, as shown by the respective Map. The Magistrate who may give the possession will cause it to be Measured in Conformity with the Ordenance leaving the Surplus which may result to the Nation for its Convenient disposal

6th. If he shall contravene these conditions he will lose his right to the Land and it will be subject to denouncement by another person.
In consequence I order that this present serving him for a letter, and being held as firm and valid, Note be made of it in the proper book and it be delivered to the person interested for his security and other purposes
Given in Monterey on the twenty Eighth of November One thousand Eight hundred and forty three.

(Signed) Manuel Micheltorena

(Signed) Manuel Jimeno
Secretary.

Note has been made of this Order in the proper book on folio 3, Ovo

(Signed) Jimeno

Filed in Office June 10th 1852

Geo. Fisher
Secy

21

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170 ND
PAGE 21

Know all men by these presents that we Antonio Maria Pico of the Pueblo San Jose de Guadalupe Upper California and Ma. del pilar Bernal wife of the said Antonio Maria Pico, for and in consideration of the sum of Two Thousand Five hundred Dollars lawful in hand paid by Henry M Naglee of San Francisco Upper California at or before the ensealing and delivery of these presents, the receipt whereof we do hereby acknowledge, have given granted bargained sold and conveyed and by these presents do give grant bargain sell and convey unto the said Henry M Naglee his heirs and assigns forever, the undivided One half of all that certain tract of land, situate in Upper California - known by the name of "Pescadero" bounded on the lower part by the Rancho of Don Juan Mar, by that of Don Jose Noriega, by Buenos Ayres at the Pass of the Pescadero and the river; being the same premises heretofore granted to the above named Antonio Maria Pico by Manuel Micheltorena Governor of the Department of the California, under the Government of Mexico, by a grant dated at Monterey, Upper California, the twenty Eighth day of November One thousand Eight hundred and forty three, and duly recorded in the proper Book of Record in the Government Archives at said Monterey, to which said grant, for the more certain ascertainment and description of the premises hereby conveyed, reference is hereby made; Together with all the Estate, right, title, claim, interest and demand whatsoever, which we have or either of us has, of in or to the same, or any part or parcel thereof; To have and to hold the aforesaid premises, with all the privileges and appurtenances thereunto belonging, unto the said Henry M Naglee his heirs and assigns to his and their use and behoof forever - and the said Antonio Maria Pico for myself my heirs Executors and administrators do covenant with the said Henry M Naglee his heirs and assigns that I will, and my heirs Executors and administrators shall warrant and defend the same to the said Henry M Naglee his heirs and assigns forever against the legal claims and demands of all persons.

In Witness whereof we have hereunto set our hands & seals, this twenty Sixth day of April in the year One thousand Eight hundred and forty nine

Sealed & delivered in presence of us -

(Signed) Antonio Ma Pico

(Signed) Madel pilar her X mark Bernal

The words "Andrew one half of" being interlined between the Eleventh and twelfth lines
(Signed) William Alex. Anderson (Signed) D Leadbetter



State of California. County of San of San Francisco: ss
On this Second day of September A.D. 1850 before me a Notary Public in and for said County, appeared D Leadbetter personally known to me to be the person whose name is subscribed in the within Conveyance, as a witness thereto, who being by me duly sworn, deposes and say, that Antonio Ma. Pico and Ma del Pilar Bernal whose names are subscribed to such Conveyance as parties thereto, are the persons described in and who executed the same in the presence of deponent and that deponent subscribed his name to such Conveyance as a witness thereof – Witness my hand and seal of Office
Signed John C McAlister Notary Public
San Francisco Cal

Territory of Upper California – District of San Jose
April 28th 1849

Then personally appeared before me the the within named Antonio Ma Pico and Ma del Pilar Bernal, being known to be the persons described in and who executed the within deed and duly acknowledged, that they executed the same for the purposes therein named of their own free will and accord

Before me K. H. Memmeck
1st Alcalde

Filed in Office June 10 1852
(Signed) Geo. Fisher, Sec.

23 Deed from Pico & wife to Nagle

170 ND
PAGE 23

Original Deed.

Know all men by these presents that we Antonio Maria Pico of the Pueblo of San Jose de Guadalupe upper California, and Ma. del Pilar Bernal wife of the same Antonio Maria Pico for and in consideration of the sum of Two Thousand five hundred dollars to us in hand paid by Henry M Naglee of San Francisco, upper California, at or before the ensealing and delivery of these presents the receipt whereof we do hereby acknowledge have given granted bargained sold and conveyed and by these presents do give grant bargain sell and convey unto the said Henry M Naglee his heirs and assigns forever the undivided one half of all that certain tract of land situated in upper California known by the name of Pescadero, bounded on the lower part by the Rancho of Don Juan Mar by that of Don Jose Noriega, by Buenos Ayres at the Pass of the Pescadero and the River: being the same premises heretofore granted to the above named Antonio Maria Pico by Manuel Michelorena Governor of the Department of the California under the Government of Mexico, by a grant dated at Monterey upper California, the twenty Eighth day of November in the year One thousand Eight hundred and forty three and duly recorded in the proper Books of Records in the Government Archives at said Monterey, to which said grant, for the more certain ascertainment and description of the premises hereby conveyed, reference is hereby made; Together with all the Estate right title dower right of dower interest and demand whatsoever which we have or either of us has of in or to the same or any part or parcel thereof; To have and hold the aforesaid premises with all the privileges and appurtenances thereunto belonging unto the said Henry M Naglee his heirs and assigns, to his and their ~~own~~ use and behoof forever and I the said Antonio Maria Pico, for myself my heirs Executors and administrators do covenant with the said Henry M Naglee his heirs and assigns that I will and my heirs Executors and administrators shall warrant and defend the same to the said Henry M Naglee his heirs and assigns forever against the lawful claims and demands of all persons. In Witness whereof we have hereunto set our hands and seals this twenty fifth day of April in the year One thousand Eight hundred and forty nine. Antonio Ma Pico (Seal)

Madel Pilar her X Bernal (Seal)
mark

Sealed and delivered in the presence of us "The words" "The undivided One half of" being first interlined between the Eleventh and twelfth lines — William Alex. Anderson
D Sandleton —

State of California }
County of San Francisco } ss:

On this second day of September A.D. 1850 before me a Notary Public in and for said County appeared D Sandleton personally known to me to be the person whose name is subscribed to the within Conveyance as a witness thereto, who being by me duly sworn did depose and say that Antonio Ma Pico and Ma del Pilar Bernal whose names are subscribed to such Conveyance as parties thereto are the persons described in and who executed the same in the presence of deponent, and that deponent subscribed his name to such Conveyance as a witness thereof

Witness my hand and Seal of Office

(Seal) John McVickers Notary Public
San Francisco —

Territory of Upper California
District of San Jose April 28th 1849

Then personally appeared before me the within named Apolinario Ma Pico and Ma Del Pilar Bernal being known to be the persons described in and who executed the within deed and duly acknowledged that they executed the same for the purposes therein named of their own free will and accord Before me

R A Dennis 1st Alcalde

Filed for record 16th day of September 1850 — 8 O'clock & 40 minutes, Recorded same day Volume One of Deeds Martines Contra Costa County Pages 138, 139 & 140 —

Thomas A Brown County Recorder of Contra Costa County

Fees $5.25

Recorded in the Juzgado del Pueblo de San Jose April 28. A.D. 1849 in Book 5 of Deeds on pages 45 & 46

R. H. Dennis Alcalde

Fees $.5.25.

Filed in Office Sept. 10 1853.

(Signed) Geo. Fisher, Sec.

25 No. 267 Antonio Maria Pico
Henry Mc Naghe
vs
The United States

Claim for the place called "El Pescadero" San Joaquin County embracing Eight Square Leagues

Opinion

170 ND
PAGE 25

This claim is founded on a grant issued by to Antonio Maria Pico by the Governor, Manuel Michelorena, bearing date the 28th day of November A.D. 1843. In this case there is no evidence that the grantee Antonio Maria Pico has complied with any of the requisitions of the Mexican Colonization Law, or any of the conditions of the grant, nor has he offered any legal excuse for not doing so, so as to entitle him to an equitable consideration of his claim. It is the opinion of the Board that the said claim should be rejected and a decree entered accordingly

Rejected

Filed in Office Sept. 19. 1854
Geo. Fisher Secy

No. 267 Antonio Maria Pico
Henry Mc Naghe
vs
The United States

Decree

On hearing of the proofs and allegations in this case it is adjudged by the Commission that the claim of the said petitioner is not valid and it is therefore declared that his application for a confirmation thereof be denied

Alpheus Felch
R. Aug. Thompson
S. B. Sawtelle
Commissioners

Filed in Office Sept. 19. 1854
Geo. Fisher Secy

24



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 certified by the Secretary, One of which Transcripts shall be filed with the Clerk of the United States District Court for the Northern Judicial District of California and the other be transmitted to the Attorney General of the United States.

**Office of the Board of Commissioners,**

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

I, George Fisher — Secretary to the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, do hereby certify the foregoing Twenty Six — pages, numbered from 1 to 26, both inclusive, to contain a true, correct and full Transcript of the Record of the Proceedings and of the Decision of the said Board, of the Documentary Evidence and of the Testimony of the Witnesses, upon which the same is founded, on file in this Office, in Case No. 217 on the Docket of the said Board, wherein Antonio Maria Pico, et al, are the Claimants, against the United States, for the place known by the name of "El Pescadero" —

**In Testimony Whereof,** I hereunto set my hand and affix my private Seal (not having a Seal of Office) at San Francisco, California, this Thirty first — day of January A. D. 1855, and of the Independence of the United States of America the seventy-ninth.

Geo: Fisher

U. S. DISTRICT COURT,

Northern District of California.

No. ~~267~~ 170

THE UNITED STATES,

*vs.* 170 ND

Antonio Maria Pico, et al.

TRANSCRIPT OF THE RECORD

FROM THE

BOARD OF U. S. LAND COMMISSIONERS,

In Case No. 267

*Filed,* February 3rd, 1855,

Wm. A. Monroe,

Clerk

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

Antonio Maria Pico
& Henry W. Naglee
Claimants and Appellants

v.

The United States of
America —
Appellee

Take Notice, that the above named Claimants and appellants intend to prosecute the appeal taken from the decision rendered against them September 19, 1854, upon a claim filed and presented to the Board of U. S. Land Commissioners appointed to settle private land claims in the state of California, which claim was for certain lands in San Joachin County in this State known as "El Pescadero", and a certified transcript whereof was filed with the Clerk of said District Court on the 20th day of December AD 1854.

Dated this 17th day March AD 1855

Lockwood Tyler & Wallace
Attys for Appellants

One No. 170

U. S. District Court

Antonio Maria Pico & Henry W. Naglee
appellants
vs
The United States of America
appellee

Notice of int. to prosecute appeal

El Pescadero

Filed March 17, 1855.
John A. Monroe,
Clerk

Lockwood Tyler & Wallace
attys for appellants

170 ND
PAGE 29

To the Honorable the District Court of the United States for the Northern District of California

The petition of Antonia Maria Pico, and Henry M Maglu respectfully sets forth and shows unto this Court, that on the tenth day of June One thousand eight hundred and fifty two before the Commission constituted and appointed for the purpose of ascertaining and settling private land claims in the State of California; a petition and claim was filed by your petitioners claiming title, and praying a confirmation of such title to a tract of land situated in said Northern district of California known as "El Pescadero" (for a description of said lands, and for a derangement of the title of your petitioners thereto, they hereby specially refer your honorable Court to said petition filed as aforesaid before said Commission.) And your petitioners further show that after the filing of said petition the same was placed upon the Calendar of causes pending before said commission, and that the claim of your petitioners was opposed on the part of the United States of America by the Law Agent for that purpose appointed, That proofs were taken, and evidence was adduced as well on behalf of your petitioners, as on behalf of the said United States, and that said proofs and testimony were afterwards submitted to the said Commission (or Board of Commissioners) who having considered the same, on the 19th day of December

1854 pronounced a decision thereon to the effect that the claim of your petitioners to said lands was not a good and valid one and should therefore be, and the same was rejected by said Board of Commissioners.

And your petitioners further show that afterwards, to wit: on the 5th day of ~~December~~ February 1855, a transcript of said cause, containing a full record of the proceedings and evidence had and taken before said Board of Commissioners was filed in this Court, which filing, by virtue of the act of Congress in that behalf operated as an appeal for and by your petitioners from the said decision to this Honorable Court, and thereupon on the 17th day of March 1855 your petitioners filed in this court a written notice of their intention to prosecute the said appeal herein. Your petitioners further show and aver that the said decision of the said Board of Commissioners is erroneous and that the said title or claim of your petitioners is good and valid, and ought to be confirmed. Your petitioners therefore pray this Honorable court that their appeal taken in this cause may be heard and determined, and that the said decision of said Board of Commissioners be reversed. And that your Honorable Court will confirm the title of your petitioners to the said lands.

Edward Fuller & Walker
Attys for petitioners
& Appellants

No 170 — ND

U. S. District Ct

vs

Antonio Maria Rico et al

vs

The United States of America

Petition for rehearing

Filed June 25, 1855,
by Cheever, Deputy,

Leave of a copy of the within petition is hereby admitted this June 25, 1855.

S W Inge

Lockwood Tyler & Wallace
Attys for Petitioners

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

The United States
Appellees
vs
Antonio Maria Pico &
Henry M Naglee

No. 170.

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

A. Glassell
Asst U.S. Atty

No. 170.
U.S. Dist. Court

The United States
ads
Antonio M. Pico
et al

Answer

Filed August 2. 1855.
by Charles
Deputy

170 ND
PAGE 34

Russell

UNITED STATES DISTRICT COURT,
Northern District of California.

Antonio Maria Pico et al.

— vs —

The United States.

San Francisco, October 18th 1855

170 ND
PAGE 35

ON this day, before John A. Monroe a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came Wm. B. Fleming a witness produced on behalf of the Claimants in Case No. 170, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 267 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows — ~~his evidence being interpreted by a sworn interpreter~~

PRESENT: R. A. Lockwood, Esq. Atty for the Claimants, and the U. S. Dist. Attorney by A. Glassell, Esq.

QUESTION BY Claimant's Counsel.

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

Answer.

Wm. B. Fleming. 28 years of age, resider in San Francisco, Cal. and am a clerk in the Board of U. S. Land Commrs for California.

2d

State what you know of the deed now produced by you.

Answer

The deed now produced of which the one in the transcript in this case on page no 23 thereof, purports to be a copy, was taken by me from the files of Case No 267, in the

130 32

archives of said Commission for the purpose of being proved in this case. It is a deed from Antonio M. Pico, and wife, to Henry M. Naglee for the undivided one half of the "Piscadero rancho, dated April 25th, 1849, and upon comparing the copy in the transcript with the original now produced ~~in the transcript~~ I find it to be a true copy. I know the signature of the Grantor ~~Maria Antonio~~ Antonio Maria Pico, having seen him write, and believe the signature to the said original deed to be his true and genuine signature.

Wm B. Fleming.

Sworn to & subscribed before me this 18th day of October, 1855.

Ino A Monroe, Ch
U S. Com'r.

A. P. Crittenden, a witness produced on behalf of the Claimants, being duly sworn according to law, deposes, and says.

Question

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

Answer.

A. P. Crittenden, 39 years of age, and reside in San Francisco, Cal.

2d.

Did you know one D. Leadbetter in California, If yea, state what you know of him, and where he is.

Answer.

I did. I have known him for more than 20 years. He is an officer of the U. S. Army. Came to California in 1849. on public service. and left here in the Spring of 1850. He is in the Corps of U. S. Engineers. There is not an other officer in the Army of that name. I think. and I am very sure there is not an other one of that name in the Engineer Corps. He has not returned to California to my knowledge. since he left in the Spring of 1850 — I saw him in Washington in the winter of 1851 and 1852. If he had returned to California. I would have heard of it.

A P Crittenden

Sworn to. and subscribed before me this 18th October. 1855.

Jno A Monroe.
U. S. Comr.

Herman Ehrenberg being called as a witness on behalf of the Claimants. and duly sworn according to law. deposes. and says.

Question

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

Answer.

Herman Ehrenberg. 35 years of age. and resides in San Francisco. Cal.

Qd

Do you know William Alexander Anderson

one of the subscribing witnesses to the original deed produced by the witness Fleming, and mentioned in his foregoing deposition.

Answer.

I do. I knew him in 1848 in Lower California, he was Interpreter to the American troops. afterwards in Monterey, and last in 1849 in San José, Cal. He was Clerk in the latter place, to some commercial house. He is now in Mexico. I have seen him write frequently, and as far as I am able to judge, ~~and~~ the signature of William Alex. Anderson, on the said deed as a subscribing witness, is his own, and genuine hand writing.

Herman Ehrenberg.

Sworn to & subscribed before me this 18th October. 1855.

Wm A Thomas.
U. S. Comm'r.

Henry. P. Andrews, a witness produced on behalf the Claimants, being duly sworn, according to law, deposes & says.

Question 1.

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

Answer.

Henry. P. Andrews, 33 years of age, and I reside in San Francisco, Cal.

2d

Do you know D. Leadbetter, one of the subscribing witnesses to the original deed produced by the witness Flemming, and mentioned in his foregoing deposition,

Answer.

I know Danville Leadbetter. He is a Captain in the Corps of U. S. Engineers. I have seen him write several times, and have seen his writing frequently, am acquainted with his hand-writing. The signature of D. Leadbetter as it appears on said original deed, as a subscribing witness, to the best of my knowledge, and belief is in the hand-writing of said Danville Leadbetter.

Henry B. Andrews

Sworn to & subscribed before me this 18th. October. 1855.

Invt Monroe,
C. L. Court

No. 170

U. S. District Court.

Maria Antonio Pico, et al.

— vs —

The United States.

Depositions of
N. B. Fleming,
A. P. Crittenden,
A. Ehrenberg, and
A. P. Andrews.

170 ND
PAGE 40

Filed October 28. 1858.

J. Phenes
Deputy

**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 Thursday the 10th day of September in the year of our Lord one thousand eight hundred and fifty-seven.

Present:



*The Honorable* OGDEN HOFFMAN, *District Judge.*

The United States
v.
Antonio Maria Pico et al.

D.C. 170 ; L.C. 267.

In this case, on application of the U.S. Attorney made in open Court, it is ordered by the Court that an appeal in behalf of the United States from the final decision of this Court rendered in said cause at the June, 1856 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.

170

United States District Court, Northern District of California.

The United States

vs.

Ant.o Ma. Pico et al

ORDER.

granting appeal.

Filed Filed Sept 10th 1857

Jno A. Moore

CLERK.

By

DEPUTY.

**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 19th day of July in the year of our Lord one thousand eight hundred and fifty-~~seven~~ eight.

Present:

The Honorable ~~OGDEN HOFFMAN, District~~ M. Hall McAllister, Circuit Judge.

170 ND
PAGE 43

The United States
v.
Antonio Maria Pico and Henry M. Naglee.

D.C. 170; L.C. 267.

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 Court at the June, 1856, 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.

M. Hall McAllister
Judge Cir. Court U.S.
Dist. of California

170

United States District Court, Northern District of California.

The United States

vs.

Antonio Maria Pico et al

# ORDER.

granting appeal

Filed July 19, 1858,

W. H. Chevers

CLERK.

By

DEPUTY.

United States of America,

To Antonio Maria Pico and Henry M. Naglee,

Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden in Washington on the first Monday in December next, pursuant to an order of appeal granted on the nineteenth day of July A. D. 1858, by the Hon: M. Hall McAllister, Circuit Judge of the United States for the District of California, and presiding over the District Court for the Northern District of California in the discharge of its appellate jurisdiction over the decision of the Board of Commissioners for the settlement of private land claims in the State of California, in a certain suit wherein the United States are plaintiffs and you are defendants in 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 nineteenth day of July in the Year of our Lord one thousand eight hundred and fifty eight.

M Hall McAllister

Judge Cir. Court U. S.

In Dist of California

United States Marshals Office
Northern District of California

I hereby certify that this Citation was received on the 19th day of July AD 1858. and I served a copey personally on Antonio M. Pico in the City of San Francisco. on the 17th day of August 1858. and at the same time exhibiting the Original Citation with the Seal of the Court, attached thereto in this Cause

San Francisco August 17th 1858

P. L. Solomon
U. S. Marshal
By John H. Williams
Deputy

170

U. S. District Court.

The United States

v.

A. M. Pico, et al.

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Citation.

---

Duel service of copy within citation by U. S. Marshal admitted this 9th day of Aug A. D. 1858.

Lockwood Shaw & Wallace
by
Attys for Claimants

---

Served by copy upon me this Aug 6. 1858.

Henry M. Naglee

---

Filed August 18, 1858

W. H. Chevers,
Clerk

170 ND
PAGE 47

Lockwood & Taylor Filed Aug 18 1858

W. H. Chevers Clerk is hereby directed to issue a citation to the claimants herein to appear & show cause why the petition of Francisco Pico should not be confirmed.

Pico et al. vs. United States

W. H. Chevers

170 ND
PAGE 48

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 Thursday the 20th day of December in the year of our Lord one thousand eight hundred and sixty.

**Present:**

*The Honorable OGDEN HOFFMAN, District Judge.*

The United States.
v.
Antonio Maria Pico, and Henry M. Nagle.

D. C. 170.
L. C. 267
"El Pescadero."

And now comes Fredrick Billings, Esq: of Counsel for the Claimants herein, and presents the Mandate of the Supreme Court of the United States affirming the decree of this Court in this Cause, as more particularly appears by reference to the said Mandate, Whereupon, and on motion of the said Claimants, by their said Counsel, it is ordered that the said Mandate be filed, and made a part of the Record of this Court in this Cause, and that the said Claimants may proceed under the said Mandate, and under the decree of this Court as thereby affirmed, as under final decree,

Ogden Hoffman
U. S. Dist Judge

170.

UNITED STATES DISTRICT COURT

Northern District of California.

The United States,

v.

A. M. Pico, et al.

Order directing the filing of the Mandate U. S. Sup. Court.

Filed December 20, 1860.

W. H. Chevers,

Clerk.

170 ND
PAGE 50

# 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*

*greeting:*

Whereas, lately, in the District Court of the United States, for the Northern District of California — before you, — in a cause between Antonio Maria Pico and Henry M. Naglee, appellants, and the United States, appellee, the decree of the said District Court was in the following words, viz:—

"It is now here ordered, adjudged and decreed by this court, that the said decision of the said Board of Commissioners be, and the same is by this court reversed, set aside, and annulled. And it is further ordered, adjudged and decreed by this court, that the claim of the said appellants, Antonio Maria Pico and Henry M. Naglee, as set forth in the said record and proceedings, is a good and valid claim, and that the same be and is now by this court confirmed to the said appellants to the extent of Eight square leagues of land, within the boundaries described in the plan annexed to the expedient, and referred to in the original grant, copies whereof are on file in this cause, provided that the said quantity of Eight square leagues so confirmed be contained within the said boundaries; but if the quantity therein contained be less than Eight square leagues, then the said claim is by this court confirmed to the extent of such less quantity, and no more".

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,~~ was submitted to the Court by Mr. E. M. Stanton of Counsel for the United States – On Consideration whereof, and on the motion of Mr. Blair of Counsel for the said Antonio Maria Pico and Henry M. Naglee – 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. –

Feb: 20th

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~~,

~~Clerk~~,.....$

~~Attorney~~,....$

$

~~Taxed by~~

Wm Thos Carroll

Clerk of the Supreme Court of the United States.

No. 170.

No. 109, December Term, 1859.

**MANDATE**

SUPREME COURT UNITED STATES.

No. 170.

"Ed Pennoyer"

vs. Mathew Neff Sheriff &c.

Filed Dec. 20. 1860.

Wm. T. Carroll

Clerk.

To
Hon Ogden Hoffman
Judge of the District Court of the United States for the Northern District of California.

The Petition of the United States respectfully showeth.

That E. F. Beale, United States Surveyor General for the Northern District of California, on the ~~4th~~ ~~of June 1861~~ 25th day of September 1861 approved the survey of the Rancho "El Pescadero" and that the date of the first publication of the notice of such approval was made on the 26th day of September 1861.
That said Survey includes lands of said United States that should not be included therein—
Wherefore said United States ask that said Survey may be ordered into Court for adjudication—
San Francisco Oct 23d 1861.

Wm H. Sharp
U. S. Atty.

It is hereby ordered that the U. S. Surveyor General for the State of California return a plat

of his official survey of the Rancho El Pescadero" duly Certified to the District Court of the United States for the Northern District of California for adjudication -
San Francisco Oct^r 23^d 1861.

170 ND
PAGE 55

Ogden Hoffman
U. S. Dist Judge

{U. S. Marshal's Office
{Nor: Dist: of California.

I hereby certify that I received the within order, on the 23d day of October, 1861, and served the same by delivering a certified copy to E. Conway, Esq., Chief Clerk in U. S. Surveyor General's Office, on the 24th day of October, 1861.

San Francisco, October 24th, 1861. } Wm. Rabe, U S Marshal
{ per Chas A Brayton Deputy

170.

U. S. Dist. Court.

The United States
—vs—
A. M. Pico, et al.

Petition of U. S. Atty. and order to subpoena witness.

Issued Oct: 23, 1861.

Filed Oct: 24, 1861.
W. H. Chevers
Clerk

170 ND
PAGE 56

170 ND
PAGE 57

# United States of America,)
**Northern District of California.** ) SS.

**THE PRESIDENT OF THE UNITED STATES OF AMERICA,**
**To the Marshal of the United States for the Northern District of California,**

GREETING:—

WHEREAS, objection has been made to the official survey and location of the land finally confirmed, in case No. 170, to A. M. Pico, et al. known as "El Pescadero", and situated in the County of San Joaquin in said District.

NOW THEREFORE YOU ARE HEREBY COMMANDED, in the name of the President of the United States of America, to give due notice to all parties having, or claiming to have, an interest in such survey and location, that they be and appear before the District Court of the United States for said District, sitting in Land Cases, on or before Wednesday, the 13th day of November A. D. 1861, at 11 o'clock, A. M. (if that day shall be a day of jurisdiction, and if not, on or before the next Wednesday thereafter,) then and there to intervene for the protection of such interest, or their defaults will be taken. And what you shall have done under this writ do you then and there make return thereon.

WITNESS, the Hon. OGDEN HOFFMAN, Judge of said Court, at San Francisco, in said District, this 23rd day of October A. D., 1861.

W. H. Revere

CLERK.

The within Moxition was received by me on Wednesday, the 23d day of October, 1861, and in obedience thereto I have given due notice, as therein commanded, by causing the publication of said notice, for ..... consecutive Wednesdays, in the ~~San Francisco Herald~~, commencing on the 24 day of Octobr 1861; and for ..... consecutive Saturdays, in the Stockton Daily Independent a paper published nearest the land, commencing on the 28 day of October 1861. both. daily till date

Dated San Francisco, Novr 13 1861.

Wm Rabe

U. S. Marshal.

UNITED STATES OF AMERICA, } ss.
*Northern District of California.*

WHEREAS, Objection has been made to the official survey and location of the land finally confirmed, in case No. 170, to A. M. Pico, et al., known as "El Pescadero," and situated in the county of San Joaquin, in said District:

NOW, THEREFORE, In pursuance of the monition of the District Court of the United States for said District, to me directed and delivered, I do hereby give public notice to all parties having, or claiming to have, an interest in such survey and location, to be and appear before the said Court, sitting in Land Cases, on or before Wednesday, the 13th day of November, A. D. 1861, at 11 o'clock A. M., (if that day shall be a day of jurisdiction, and if not, on or before the next Wednesday thereafter,) and then and there to intervene for the protection of such interest, or their defaults will be taken.

Dated at San Francisco, in the District aforesaid, Oct. 23, 1861.

WM. RABE,
U. S Marshal.

oc24-td

No. 170.

**UNITED STATES DISTRICT COURT,**
**Northern District of California.**
IN LAND CASES.

*THE UNITED STATES.*

*V.*

A. M. Pico, et al.

MONITION.

*Returnable* November 13th 1861.

*Issued* October 23d. 1861.

*Filed* November 13th 1861.

W. H. Chevers

*Clerk.*

170 ND
PAGE 58

170 ND
PAGE 59

At a Stated Term of the DISTRICT COURT OF THE UNITED STATES OF AMERICA, for the Northern District of California, held at the Court Room, in the CITY OF SAN FRANCISCO, on Wednesday the 13th day of November in the year of our Lord one thousand eight hundred and sixty one.

**Present:**

*The Honorable OGDEN HOFFMAN, District Judge.*

**The United States,**

*v.*

Antonio Maria Pico, et al.

IN LAND CASES.

*District Court No.* 170.

*Land Com. No.* 267.

AND now at this day the United States Marshal having made return upon the Monition heretofore issued in this cause, that he had given due notice as therein commanded; on motion of W. H. Sharp, Attorney for the United States proclamation was made that all parties having, or claiming to have, an interest in the survey and location of the land finally confirmed in the above entitled cause, appear and intervene for the protection of such interest;

The U. S. Attorney, and John B. Williams, Esq. appeared in behalf of the United States.
Messrs Storr, and Patterson appeared in behalf of Claimants.

No other party appearing, on like motion

~~whereupon~~ IT IS ORDERED, that the default of all parties not appearing as aforesaid be and the same is hereby entered.

No. 170

UNITED STATES DISTRICT COURT

Northern District of California.

IN LAND CASES.

*THE UNITED STATES,*

*V.*

A. M. Pico et al.

ORDER ON RETURN OF MONITION.

*Filed* November 13, 1861.

W. H. Chevers,

*Clerk.*

170 ND

PAGE 60

U. S. District Court.

The United States
v.
A. M. Pico, et al } No. 170

It is hereby stipulated and agreed that the United States have ten days additional time within which to file their exceptions to the official survey of the land confirmed in the above entitled cause.

San Francisco, Nov 21, 1861.

Patterson & Shaw
Attys for Claimants.

170

U. S. Dist Court

The United States

v

A. M. Pico, et al

Stipulation extending time to file exceptions ten days.

Filed Nov: 29. 1861.

W. H. Chevers,
Clerk.

U. S. District Court.

The United States
v.
Antonio Maria Pico
and Henry M. Naglee

} No. 170.

And now come the United States by their Attorney Wm. H. Sharp, and except to the official survey of the land confirmed in this case, a certified copy plat whereof was returned to this Court by the Surveyor General of the United States for California and filed October 25. 1861:

And the United States aver —

1 That the said survey is erroneous, because it includes within its limits certain lands granted to the State of California by virtue of the provisions of the Act of Congress entitled "An Act to enable the State of ~~California~~ Arkansas and other states to reclaim swamp lands within their limits", approved September 28. 1850, and which lands are now held, under the Act of the Legislature of the State of California, entitled "An act to provide

for the sale of the swamp and overflowed lands belonging to this State, passed April 28th 1855, as follows.

| | | |
|---|---|---|
| By R. C. Page | 316.32 | acres |
| " Henry D. Ellenholz | 300.79 | — |
| " James Devoe Jr | 286.18 | — |
| " Arnold Lindau 302.47 252.29 | 554.76 | — |
| " John Keon | 303.33 | — |
| " Daniel Winter | 285.79 | — |
| " J. T. & Alex Boyd | 320. — | — |
| " C. Mohr | 303.85 | — |
| " Thos. D. Morris | 316.87 | — |
| " Walter Hawchurch | 292.18 | — |
| " Robert Hawchurch | 312.32 | — |
| Total | 3594.39 | — |

Whereas the said official survey should exclude said lands.

Wherefore the United States pray that said survey be set aside as erroneous, and an order entered directing a new survey to be made which shall exclude said tracts.

W. H. Sharp
U. S. Atty.

We agree and stipulate that the foregoing Exceptions may be filed
Dec 7 1861. Patterson and Stow of Counsel for claimants

170

U. S. District Court

The United States

v.

A. M. Pico, et al

Exceptions to survey by United States.

Filed Dec: 7. 1861.
W. H. Chevers,
Clerk

At a Stated Term of the District Court of the United States for the Northern District of California held at the Court Room in the City of San Francisco on Wednesday the 8th day of ~~December~~ January, A.D. 1862.

Present:

Hon. Ogden Hoffman, Dist Judge.

The United States
v.
Antonio Maria Pico
and Henry M. Naglee.

No. 170.

It is hereby stipulated and agreed, in open Court, by and between N. H. Sharp, U.S. Attorney for the Northern District of California, and N. W. Stow and Wm. H. Patterson, attorneys for the claimants herein, and for the legal representatives of said claimants, as follows:

That whereas the official survey of the land confirmed in this case has been objected to by the United States, as more fully appears by the exceptions of the said United States filed Dec 7, 1861, and whereas the said claimants and their legal representatives are desirous to have the said survey approved and

confirmed, and their said attorneys agree that their clients, the said claimants and their legal representatives, who are now absent from the State of California, shall make good and sufficient conveyances to the parties named in said exceptions as claiming certain tracts of land, included in said official survey, known as swamp and overflowed lands, before the expiration of the present December Term, 1861, of this Court, or in default thereof that new exceptions may be filed to the said survey: it is therefore stipulated and agreed by the said Stow and Patterson in behalf of their said clients, the claimants herein and their legal representatives, that within the present December Term, 1861, of this Court, they will procure good and sufficient conveyances to be made of the several tracts of land referred to and claimed by the parties named in said exceptions, to wit:

| | | |
|---|---|---|
| To Robert C. Page | 314.32 | acres |
| " Henry D. Ellenbolch | 300.79 | " |
| " James Deere Jr | 288.18 | " |
| " Arnold Lindau | 554.71 | " |
| " John Kern | 303.33 | " |
| " Daniel Winter | 285.79 | " |

| | | | |
|---|---|---|---|
| " | Daniel Winter — | 285.79 | " |
| " | J. J. & Alex Boyd — | 320. — | " |
| " | C. Mohr — — | 303.85 | " |
| " | Thomas D. Morris — | 316.87 | " |
| " | Walter Hawxhurst — | 292.18 | " |
| " | Robert Hawxhurst — | 312.32 | " |
| | In all — | 3594.39 | " |

And it is hereby stipulated and agreed in behalf of the United States, by their said attorney, that application shall be made to the Court for an order approving and confirming the said official survey.

And it is further stipulated and agreed in behalf of the claimants by their said attorneys, that, in case good and sufficient conveyances of the said $3594\frac{39}{100}$ acres to the said parties claiming as aforesaid are not procured before the expiration of the present December Term, 1861, of this Court, the attorney for the United States may, before the expiration of said present term, file new exceptions to the said official survey and proceed in the cause in the same manner as if this stipulation had not been entered into.

And it is further stipulated

and agreed in behalf of the United States, by their said attorney, that immediately upon the procurement of the said conveyances a final decree shall be entered confirming to the claimants and their legal representatives the land confirmed in this case as shown by the certified copy plat of the official survey, filed Oct 25. 1861.

Wm H. Sharp
U. S. Atty.

Patterson & Stow Attys for
Wm Naylor. Martha Palmer
Mrs Jess. Benton Fremont Claimants
and for Claimants

170 ND
PAGE 70

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

**Present:**

*The Honorable OGDEN HOFFMAN, District Judge.*

The United States
v.
Antonio M. Pico and
Henry M. Naglee

No. 170.

And now at this day, on reading and filing the annexed stipulation, and on application of William H. Sharp Esq, U. S. Attorney, Messrs Stow and Patterson, attorneys for claimants being present and consenting thereto, It is Ordered, that the United States have leave to withdraw their exceptions, filed December 7, 1861, to the official survey of the land confirmed in this case: And it is further Ordered and decreed that said survey, shown by the certified copy plat filed Oct 25, 1861, be and hereby is approved as the official survey of the land confirmed in this case, in accordance with and subject to the provisions of said annexed stipulation.

Ogden Hoffman
U. S. Dist Judge

170

UNITED STATES DISTRICT COURT

Northern District of California.

The United States

v.

A. M. Pico, et al.

Stipulation and order approving survey.

Filed January 8th 1862.

W. H. Chevers,

Clerk.

170 ND

PAGE 71

At a Stated Term of the District Court of the United States for the Northern District of California, held at the Court Room in the City of San Francisco, on Wednesday the ninth day of April, A.D. 1862,

Present:

Hon. Ogden Hoffman, Dist. Judge.

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The United States
v.
Antonio Maria Pico
and Henry M. Naglee.
} No. 170

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It appearing to the Court that, by its order entered on the eighth day of January, A.D. 1862, the official survey of the land confirmed in the above entitled cause was approved, subject to the provisions of a certain stipulation read and filed on the same day; and it appearing to the Court that the provisions of the said stipulation have been fulfilled, Now Therefore, on application of the attorneys for claimants, the District Attorney of the United States being present

and consenting thereto, It is Ordered, adjudged and decreed, that the survey of the land heretofore confirmed to the said Antonio Maria Pico and Henry M. Naglee, approved by the Surveyor General of the United States for California September 20th 1861, and a certified copy of the original plat whereof was filed in the cause October 25th 1861, is a good and valid survey, and the same is hereby approved and confirmed to the extent of Thirty five thousand, five hundred and forty six 87/100 acres, as shown by said certified copy plat, hereto annexed and made part of this decree, marked "Approved April 9th 1862, Ogden Hoffman, U.S. Dist Judge", to which said plat reference to be had for a more particular description of the land hereby finally confirmed to the said Antonio M. Pico and Henry M. Naglee.

Ogden Hoffman
U. S. Dist Judge

170 ND
267 Bd

U. S. District Court.

The United States

v

A. M. Pico, et al.

Final Decree.

Filed April 9, 1862,
W. H. Chevers,
Clerk



2

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

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The United States
v. } No. 170.
Antonio Maria Pico
& Henry M. Naglee.

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It is hereby stipulated and agreed by and between the parties to the record in the above entitled cause, by their respective attorneys, that no appeal will be taken to the U. S. Supreme Court from the final decree of this Court made and entered on ~~Nov~~ April 9th 1862; and that an order may be entered declaring the survey and location of the land, so confirmed as aforesaid, finally approved and determined.

San Francisco, April 1862

Wm H. Sharp
U. S. Atty.
Jno B Williams
Atty in aid of U. S. atty.
W. W. Stow & Patterson
Atty for Claimants.

170

U. S. District Court

The United States

v

A. M. Pico et al

Stipulation that no appeal will be taken from Final Decree

Filed April 9. 1862.
W. H. Chevers.
Clerk

170 ND
PAGE 77

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

Present:

*The Honorable OGDEN HOFFMAN, District Judge.*

The United States
v
Antonio Maria Pico & Henry M. Naglee } No. 170.

On reading and filing a stipulation by the attorneys of the respective parties to the above entitled cause to the effect that no appeal will be taken from the final decree of this Court made and entered on this 9th day of April, 1862; on application of Messrs Stow & Patterson, attorneys for claimants, It is Ordered, that the survey and location of the land so confirmed as aforesaid stand as finally approved and determined within the meaning of the 5th Section of the Act of June 14, 1860: And it is further Ordered that a certified copy of this order may be served by the U. S. Marshal upon the Surveyor General of the U. S. for California.

Ogden Hoffman
Dist Judge

170

UNITED STATES DISTRICT COURT,

Northern District of California.

The United States

vs.

A. M. Pico et al

Order that survey stand finally approved.

Filed April 9th 1862,

W. A. Cheever,

CLERK.

~~By~~

~~DEPUTY.~~

Towne & Bacon, Printers, 125 Clay Street, corner Sansome.

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

Antonio M. Pico et al
vs Appellants.
The United States
Appellees.

No 267.

Appeal from the Board of Commissioners, &c.

Case.

October 4th 1843, Antonio M. Pico petitioned the Governor of California for the place named El Pescadero, on the San Joaquin River, containing Eight Square leagues, as shown by a map presented by the petitioner. Record page 13.

October 7th 1843, Governor Micheltorena Referred the petition to the Secretary of State. Rec.d page 13.

November 21st 1843, After several reports by subordinate officers to the Secretary of State, the latter, (Manuel Jimeno) reported to the Governor that the land was subject to grant, and that though another person had petitioned for the land, yet Pico had the priority.- The Governor reserved his decision.- Rec.d page 16.

November 28th 1843, Governor Micheltorena issued to the petitioner Pico a title in full property for the Eight leagues mentioned in his petition, as shown by the map annexed to the Espediente,

"— bounded on the lower side by the Ranchos of Don Juan Marsh, by that of Don Jose Noriega, by "Buenos Ayres" at the pass of El Piscadero, and by the River:"— subject to the approval of the Departmental Assembly, and to the usual conditions in such grants; and reserving the overplus &c:— And the Secretary of State certified that the grant had been recorded in the proper book. Recd page 19.

On the 25th of April, 1849, Antonia M Pico and wife conveyed to the petitioner Henry M Naglee the undivided half of the said Eight leagues of land, for the consideration of $2500. The deed was acknowledged before an Alcalde of San Jose on the 28th of April 1849; and on the 2d of September 1850, Leadbetter one of the subscribing witnesses, made affidavit of its execution before a Notary Public: and on the 16th of the same month, the deed was recorded in San Jose. Recd page 23.

June 10th, 1852, Pico and Naglee filed with the Board their petition, claiming a confirmation of said grant.— They also filed a certified copy of the Expediente from the Archives in the Office of the Surveyor General, (including the petition for the land, the map, reports, &c.). Recd pages 3, 7.

The petitioners proved the authenticity of the original grant by the deposition of J. Arguello. Recd page 5.

They also proved, by the deposition of Antonio Sunol, that soon after Pico received the grant, he prepared to remove his cattle on the land, but was prevented from doing so by the hostility of the Indians, &c. Rec. page 5.

There is no proof that the grant was approved by the assembly: and of course, there was no survey, or judicial possession.

The execution of the deed from Pico and wife to Nagle was not formally proved before the Commissioners; but the defect is supplied in this Court.

The Commissioners rejected the claim on the ground that there is no evidence that Pico "ever complied with any of the requisitions of the Mexican Colonization law, or any of the conditions of the grant; nor has he offered any legal excuse for not doing so, so as to entitle him to an equitable consideration of his claim." Rec. page 25.

The Commissioners rendered the above judgment, prior to the decision of the Fremont case. This case occupies a more favorable position than the Fremont case; and the grant is clearly entitled to confirmation. The title is in due form; and the conditions are all subsequent; and no denouncement or forfeiture

is pretended.

Besides, the testimony of Sunol shows an ample excuse for not complying with the conditions as to occupancy, &c. -

It is deemed unnecessary to argue the cause. The petitioners and appellants submit it to this court, praying that the claim may be confirmed, &c.

Lockwood Tyler & Wallace
Attys for Appellants.



I have examined the above Brief, and in answer will make no other reply thereto than to state that the counsel for the U. States rests on the general objections so often urged to the confirmation of similar cases; which objections the court is so familiar with that it is deemed unnecessary to repeat them here -

A. Gleason
Asst Counsel of U.S.

Dist: Ct of the United States for the Northern Dist of California.

Antonio M. Pico et al,
Appellants
vs
The United States.
Appellees.

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Brief for Appellants.

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Lockwood Tyler & Wallace
Attys for Appellants.

Embery

Antonio Maria Pico
vs
The United States } 170 ND

80.

170 ND
PAGE 84

The claim in this case is founded on a grant issued by the Governor Micheltorena bearing date the 28th day of ~~December~~ November 1843

The expediente is produced from the archives and the original grant delivered to the party interested: the authenticity of which is duly proven

The claim was however rejected by the Board on the ground that the conditions of the grant had not been performed, and that no legal excuse for non performance had been offered.

This decision was rendered before the case of Fremont was determined by the Supreme Court. In the statement of the case filed by the Counsel for the appellant no argument is offered on the points involved in the case the ~~Confident~~ expectation being confidently entertained that the rules laid in the U. S. v. Fremont

would govern the case
On the part of the U. S. the
argument is submitted, the Court
being merely referred to the objections
raised in similar cases.



It is to be regretted that
~~a~~ the point involved in this case
was not debated by Counsel &
that the Court is obliged to arrive
at a conclusion unassisted by argument at the Bar
~~by learned aid usually obtained from the Bar~~.

It is not pretended ~~in this~~ that the
grantee was complicit, during the exist-
ence of the former government with
the conditions of the grant
By the testimony of A. Sinol it
appears that "soon after Pico received
"his grant he prepared to remove
"his cattle on this Rancho but
"the Indians became hostile
"about this time and murdered
"Galvac's Mayor domo on the other
"side of the river and prevented
"Pico from settling on his land ~~the other~~
~~side of the river~~. From this time
"until 1848 & 1849 the Indians
"continued hostile & ~~murdered~~ robbed
"the Ranchos even down to the

"Valley of San José" – In 1847 troops
"were sent against them but
"they continued their depredations
"until after the discovery of
"gold in 1848"



The conditions attached to
Grants in California were clear
by conditions subsequent and
by the decision of the Supreme
Court in the case of Fremont vs
the U. S "It is established that
the grant of the Governor altho
unconfirmed by the department
of assembly "vested in the
grantee a present and immedi-
ate interest" It is true that
the grant in that case
alluded to the meritorious services
of the grantee but independently
of the fact, that the Governors
do not seem to have been
by the colonization laws recompense
rewarded to such services by
grants of land but on and
at most only
could only consider them as
entitling the applicant to a prefer-
ence over other petitioners, it is clear that
the grants being in the same terms
must receive the same
construction whatever considera-
tions may have moved the governor to

make them the law under which he acted was intended to secure the settlement of the country by providing for the distribution of the public land among colonists and settlers — For such alone the Governor was authorized to grant and we accordingly find that in all most all cases conditions were annexed to the grant requiring the occupation and cultivation of the ceded land — Under our system the same result is attained by withholding the patent or final title until after the person who has entered ~~upon~~ the land has effected a permanent settlement upon it — Under the Mexican law however a full title issued in the first instance but conditions were attached providing for a forfeiture in case the grantee by omitting to occupy & settle upon his land ~~contravened~~ defeated the policy of the Government & failed to furnish what was the sole consideration of the grant

~~such than~~ These grants then passed a present & immediate interest to the grantee subject however to the conditions subsequent ~~alluded~~ and such was their ~~effect~~ not only when the departmental assembly had confirmed but now as decided in the case of Fremont without such confirmation —

From this general statement it is we think apparent that the ~~rules~~ principles established in that case apply to all colonization grants made under the regulations of 1828 and cannot be restricted to those alone in which the meritorious services of the grantee may happen to be alluded to in the grant —

This grant then like that to Alvarado in the case referred to having vested in the grantee a present & immediate interest the inquiry as in that case, is "Whether there has been any unreasonable delay or want of effort on the part of the grantee to fulfil its conditions

"and whether there is room
"for the presumption that the party
"had abandoned his claim before
"the Mexican town ceased to exist
"and is now undergoing to be
"frame it form its enhanced value"



The facts in the case of Fremont
on which it was held that no
unreasonable delay had occurred.
and that no such presumption
arose were established in a manner
much more satisfactory than those
~~now~~ which obtain in this case. It
may not be "very clear" as in that
case that during the continuance
of the Mexican town it was
impossible to have made a in
dry or built a house on the
land ~~the land~~, but the fact
exists in this case as in that
that no one else proposed to settle
on it or denounced ~~the land~~ it for
non fulfilment of the conditions
The testimony of Sonad tho' less
full & satisfactory than could be
wished nevertheless shows that the
obstacles to the settlement were nearly
identical with those which prevailed

Alvarado from complying with the conditions of his grant. The grant to Pico is dated Nov. in 1843 while that to Alvarado was issued in February 1844 only 3 months afterwards — The general condition ~~circumstances~~ of the country & the political disturbances which precluded a settlement in the one case must have imposed obstacles equally insurmountable in the other.

But the inquiry is not whether the grantee could by possibility have effected a settlement on his land, but whether his delay has been unreasonable — and so unreasonable as to furnish a presumption that he had ~~totally~~ abandoned ~~it~~ his claim & that he is now fraudulently attempting to ~~resume~~ resume it —

Under the evidence we feel ourselves to say that his delay is not only susceptible of an explanation ~~in~~ consistent with the absence of any an intention on his part to ~~abandon himself~~ abandon his claim but that ~~the~~ it

seems to have been caused by circumstances over which he had no control & which probably rendered it unavoidable. It may be urged that in this case the Governor did not as in the case of Alvarado dispense with the diseño or plan which usually accompanied the petition and that the presumption does not arise in this case as in that that the Governor "officially admitting that the land was situated in such a wilderness & "bordered by such dangerous "neighbors as that no plan could "be prepared" implicitly recognise the impracticability of effecting a settlement within the time. There is some force perhaps in this suggestion. But it is to be remembered that the Governor expressly imposed upon Alvarado the condition of making his settlement within the year, and if his dispensing with the diseño might be considered as ~~raising the presumption~~

a recognition of the fact that the condition of the country might occasion delays and that such delays would not be deemed unreasonable the other circumstance that he notwithstanding his ~~this~~ in the 2d condition on the settlement within the usual time in some degree at least impairs the force of the argument. ~~deriving from his dispensing with the design~~ The insertion of the condition is not however so conclusive on this point as it might appear, for the dispensing with the design was an unusual and exceptional indulgence of the Governor ~~upon~~ in granting which he exercised a discretion after his attention had been attracted to the subject while the grant insertion of the usual conditions in the grant was probably the work of some clerk who drew up this paper in the usual form ~~or~~ without reference to any peculiar

circumstances attending it.
~~Besides~~ The imposing of such
tion of the conditions in the
would moreover, under the
Mexican system have naturally been
little regarded by the grantee
for he knew that so long
as he was unable to effect
a settlement no one ~~other person~~ else
would be, and, as observed
by the Supreme Court, that the
grant would not be forfeited
unless some other person
desired, and was ready, to occ
upy ~~the~~ land

I do not perceive therefor
that the fact that the Governor
in the case of Fremont dispensed
with the decree ~~[illegible]~~ while
in this case it was duly submitted with the petition
~~affords justifies us in drawing~~ furnishes ground for a broad
distinction between that case
and this.

The important and the sole
question is as propounded by
the Supreme Court in the case
so often referred to, "whether any

"thing done or omitted to be
"done by the grantee during
"the existence of the Mexican
"Government for California for
"feited the interest he had ac
"quired & revested it in the
Government."

That such forfeiture could
only have been incurred ~~Bronned by an to seas~~
~~on of~~ by unreasonable delay
or want of effort on his part
to fulfil ~~these~~ conditions - &
such as to raise the presump
tion that had abandoned his
claim -

It seems shown in this case
that the delay arose from
obstacles which may be regarded
as insuperable, that it was
not only not unreasonable but
probably unavoidable, no
presumption of abandonment
can arise - And the title
not having been "forfeited & re
vested in the Government remained
at the time the sovereignty passed
to the U. S. vested in the grantee &
the U. S are bound in good faith

12

to uphold & protect it"

17. How. p. 587—



A decree of confirmation must therefore be entered.

33

Antonio Ric 170

Ricos

vs

The U. S

Opinion

Sept. 1.

No decree to be entered
until transcript corrected

170

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

Antonia M. Pico, et al
vs appellants
The United States,
appellees

"El Pescadero". No 267. Commissioners Docket

Index to Transcript.

No 170

Index.

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

San Francisco, Jany 31st 1855

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

Sir;

I herewith transmit you, pursuant to the requirements of the Act of Congress, approved August 31st, 1852, a Transcript of the Record of the Proceedings and of the Decision of this Board, of the Documentary Evidence and of the Testimony of the witnesses upon which the same is founded, in Case No. 267 on the Docket of the said Board, wherein Antonio Maria Pico, et al, are the Claimants against the United States, for the place known by the name of "El Pescadero"

and request your receipt for the same.

I am, Respectfully,
Your Obt Servant,
Geo. Fisher