CASE NO.
184
NORTHERN DISTRICT

MOQUELAMOS GRANT

ANDRES PICO
CLAIMANT

LAND CASE 184 ND pgs. 157

NOV 3 1962

D

TRANSCRIPT

OF THE

PROCEEDINGS

IN CASE

NO. 357.

Andres Pico CLAIMANT

VS.

THE UNITED STATES, DEFENDANT,

FOR THE PLACE NAMED

"Mogielamos"

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

The Petition of Andres Pico, *for the Place named* "Moquelamos", *was presented, and ordered to be filed and docketed with No.* 357 *and is as follows, to wit;*

(Vide page 3 *of this Transcript.)*

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

San Francisco January 22d 1853.

In Case no. 357, Andres Pico for the place named "Moquelamos", the deposition of Nicolas A. Den, a witness in behalf of the claimant, taken before Commissioner Harry I. Thornton, with documents marked H. I. T. nos. 1. & 2. annexed thereto, was filed:

(Vide page 4 of this Transcript.)

San Francisco, Sept. 13 1853.

Case no. 357, Called: on motion of the Counsel for the claimant, ordered to the foot of the Docket.

San Francisco June 20th 1854.

Case no. 357, on motion, was ordered to be placed at the foot of the Calender of the 1st Class Cases on the Trial Docket.

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San Francisco August 29 1854.

Case No. 357 was submitted without argument and taken under advisement.

San Francisco October 3d 1854.

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

(Vide page 17 of this Transcript.)

and the following order was made, to wit;

(Vide page 19 of this Transcript.)

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Petition,

To The Honorable Board of U.S. Land Commis=
=sioners for the Adjudication of Private Land Claims
in California,

Your Petitioner Andres Pico a native of Mexico
and Citizen of Los Angeles in California respectfully
represents that in the month of May 1844
Your Petitioner presented his petition to
Pio Pico, then Governor of California and as
such duly empowered to grant lands therein,
for a grant of eleven leagues of land constitu=
=ting the track known as Mogquelemos situate
in the present County of Calaveras, that
thereupon the said Governor proceeded to obtain
according to law the required information
in regard to the status of the Petitioner and
the object of the petition, and on the sixth day
of June A.D. 1846, duly made to Your Peti=
=tioner the grant of the said land which is
herewith filed with a translation thereof.

That said grant was duly approved
by the Departmental Assembly of California on
the fifteenth day of June 1846.

That said land is bounded on the north
by the Southern shore of the Mogquelemos river
On the east by the Sierra, or range of moun=
=tains called On the South by
the lands of Mr Gulnek, and
On the West by the Estuaries of the beach.
That Your Petitioner therefore took pos=
=session of said land and has continued
in possession ever since and that he
knows of no conflicting claim thereto.

He therefore prays that his said claim
and title to said land may be duly confir=
=med by your Honorable board.

Clark Taylor & Beckh, Attys for Petitioner

Filed in Office
Sept 22nd 1852
Geo. Fisher
Sec.

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San Francisco, Jany 22nd, 1853.

On this day before Comr. Harry I. Thornton came Nicolas A. Den a witness in behalf of the claimant Andres Pico petition No 357 and was duly sworn, his evidence being given in English.

The U.S. Associate Land Agent was present.

Questions by Claimant

Deposition of Nicolas A. Den

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

Answer. My name is Nicolas A. Den, My age forty years, and my place of residence Santa Barbara.

Quest. 2nd. Look at the documents now shown you, marked exhibits 1 & 2 and attached to your deposition purporting the one to be an original grant from Pio Pico to Andres Pico of the land known as "Mogueleno" the other the approval of said grant. State what you know concerning said documents and whether you recognise the signatures thereto to be genuine.

Answer. I have examined the documents marked Exhibits 1 & 2 filed with this deposition. I have no doubt of their genuiness. I am well acquainted with their hand writing of Pio Pico and José Matias Moreno having often seen them write and state that their signatures in and upon said documents are their genuine signatures N A. Den.

Sworn & subscribed before me
this 22nd of Jany 1853.

Harry I. Thornton
Comr. &c

Service acknowledged
R. Greenhow Asst. Land Agent

Filed in Office Jany 22nd 1853. Geo. Fisher Sec.

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Pio Pico Gobernador Constitucional del departamento de California.

Doc. H. S. y. No. 1. annexo: to Dep of N. A. Den

Sello

Por cuanto Don Andres Pico: mexicano de nacimiento ha pretendido p.a su beneficio personal y el de su familia el terreno conocido con el nombre de "Moquelamos" en estencion de once sitios de Ganado mayor practicadas previamente las diligencias y averiguaciones concernientes segun lo dispuesto por leyes y reglamentos usando de las facultades que me son conferidas à nombre de la Nacion Mejicana, he venido en concederle el terreno mencionado, declarandole la propiedad de el por las presentes letras, à reserva de la aprobacion de la Excma: Asamblea Departamental y bajo las condiciones siguientes.

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PAGE 6

1.a Sera dueño en propiedad de once sitios de ganado mayor en el rio de Moquelamos que linda al Norte con la Orilla sur de dicho Rio: al Oriente con la Sierra inmediata al sur con el Terreno del señor Gulnak, y al poniente con los Esteros de la playa.

2.a El terreno que se le adjudica, lo mantendrà libre de fianza, hipoteca ni otro gravamen alguno, ni enagenarlo en poder de manos muertas.

3.a Pedirà al Juez respectivo que le de la posesion juridica en virtud de este despacho p.r el cual se le demarcaran los linderos poniendo las mojoneras de Estilo.

4.a podra cercarlo sin perjudicar las travesias caminos y servidumbres; lo disfrutarà libre y esclusivamente destinandolo al uso y aprovechamiento que mejor le conviniere pero no podra enagenarlo antes de cuatro años de haber recibido la judicial posesion.

5.a Si contravniere à estas condiciones perderà su derecho al terreno y sera denunciable por otro que carezca de Terreno. y lo pretenda

Por tanto mando que teniendose el presente titulo por forme y valedero, se tome razon de el en el Libro à que corresponde y se le entregue al interezado para su resguardo y demas fines.

Dado en la Ciudad de los Angeles Capital del Departamento de Californias en papel comun por falta de sellado à los seis dias del mes de junio del año de mil ocho cientos cuarenta y seis.

Pio Pico
José Matias Moreno
Secretario Int.

Queda tomada razon de este Superior despacho en el Libro respectivo.

Moreno.

Filed in Office Jany 22. 1853

Geo: Fisher. Secy

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"B"

Translation of Grant.

/ Translation of Grant /

Pio Pico Constitutional Governor of the Department of Californias.

In asmuch as Andres Pico a Mexican by birth has solicited for his personal benefit and that of his family the land known by the name of "Moquelamos" to the extent of eleven square leagues; having first made the necessary enquiries and investigations according to the requisitions of the laws and regulations; using the faculties in me vested; in the name of the Mexican Nation I have now ceded the land mentioned declaring it his property by these presents subject to the approval of the Most Excellent Departmental Assembly and under the following conditions;

1st. He will be owner in fee of eleven square leagues on the river "Moquelemos" bordering on the North upon the Southern shore of said river, on the east upon the adjacent ridge of mountains, on the South upon the land of Mr. Gulnak, and on the west upon the estuaries of the shore.

2nd. The land which is hereby ceded he will keep free from obligations mortgage and every other encumbrance, and he will not convey it in mortmain,

3rd. He will apply to the proper justice to give him juridical possession by virtue of this Title, who will designate the boundaries, placing the usual land marks,

4th. He may enclose it without prejudice to the ways, roads and servitudes

He will enjoy it freely and exclusively

appropriating it to such culture and use as may best suit him, but he must not sell it till four years after he shall have obtained juridical possession.

5th. If he shall violate these conditions, he will loose his right to the land and it will be denounceable by another who may want and ask for the land.

Wherefore, I order that the present title being held as firm and valid an entry of it be made in the corresponding book, and that it be given to the party for his security and other ends.

Given in the City of Los Angeles, the Capital of the Department of Californias, on common paper for want of stamped on the sixth day of June in the year eighteen hundred and forty six.

Pio Pico,
José Manás Moreno

This superior despatch has been entered in the corresponding book.

Moreno.

Filed in Office Septr 22nd 1852
Geo. Fisher
Lec.

[Spanish Doc follows]

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1. L. D. R. Asamblea Depart.t De orden de la Excma A-
de California } samblea Departamental,
paso à manos de V. S. para el superior conoci
6. miento del Excmo Sor Gobernador, los titulos
Approval De de Terreno concedidos al Norte de este Depar
par.t. Assembly tamto por el Gobierno del mismo en favor de los
Sres D.n Guillermo Gulnak, Comand.te de
Escuadron D.n Ambres pico y D.n Francisco
Azec, relativos, el primero su fha 13 de Enero
de 1844. à once sitios de Ganado menor en el
punto llamado Campo de los Franceses, el se
184 ND gundo fha 5 de Junio pp.do igualm.te de once
PAGE 10 sitios de ganado mayor en el Rio de los Moque
lines, y el terreno de seis sitios en St.a Isabel
cuyos tres titulos, q.e tanto recomendo el pronto des
pacho de ellos. S. E el Sor Gobernador, fueron
aprobados, conforme à la Ley de la materia
en sesion de hoy por este Honorable Cuerpo à q.e
tengo el honor de pertenecer como Diputado
Secretario.
Y cumpliendo con aquella superior disposicion
lo digo à V. S. p.a el fin indicado, protestandole
à la Ver, las mas distinguidas consideraciones
de mi particular aprecio.
2. L. D. R. Dios y Libertad Sala de Sesiones en los Ange
les à 18 de Julio de 1846.
Narciso Botello
Dep.t Secrio

Sor Secret.o del Despacho de Gobierno de este
Department.o D.n Jose Matias Moreno.

Office of the Surveyor General of the United States
for the State of California.
I, Samuel D. King Surveyor
General of the United States for the State
of California and as such now having in my
Office and under my Custody a portion of
the Archives of the former Spanish and Mexi
can Territory or Department of Upper Califor-
nia do hereby certify that the two preceding
and hereunto annexed pages of tracing paper

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numbered One and Two and each of which is verified by my initials. (L.D.R.) exhibits a true and accurate copy of a document on file and forming part of the Land Archives in this Office.

(Seal) 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 25th day of June 1852

Danl. D. King

Survy. Genera. Cal.

Filed in Office Sept 1st 22nd 1852

Geo. Fisher. Secy

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Translation
of
Approval Dept.
Assembly.

Departmental Assembly
of California

By order of the Excellent Departmental Assembly, I convey unto your hands for the superior knowledge of the Excellent Sr. Governor, three title-deeds to land granted in the North of this department by the Government of the same in favor of Messrs Guillermo Gulnack, the squadron commander Dn. Andres Pico and Don Francisco Arce, relatives the first named dated 13th. January 1844 to eleven square leagues in the point called campo de las Franceses, the second dated 5th June last, likewise to eleven square leagues on the river of las Moquelamas, the third to six square leagues (sitios) in Sta Isabel, which three title-deeds, of which I at the same time, recommend the speedy despatch, His Excellency the Governor, were approved, conformable to the laws of the matter in to days session by this Honorable body to which I have the honor to belong as secretary.

And complying with that superior arrangement, I communicate in to you for the purpose indicated, assuring you at the same of the most distinguished considerations of my particular esteem.

God & Liberty. Hall of Sessions Los Angeles the 15th. of July 1846.

(Signed) Narciso Botello Dep Secy

To the Secretary of State of the Government of this Department. José Matias Moreno.

Filed in Office Sept. 3rd 1853
Geo. Fisher Sec.

(Spanish Doc Folders)

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No. 2
Doc. H. 2. y 2.
annexd. to Dopo
y Ct. A. Dep.

Pio Pico Gobernador Constitucional del Departamento de California.

La Excma Asamblea Departamental en sesion de hoy tubo à bien decretar lo siguiente "Se aprueba la concesion hecha à favor de Don Andres Pico" de once sitios de ganado mayor en el Rio de los "Moquelamos" que le fue concedido por el superior Gobierno Departamental, segun titulo librado con fha seis de Junio del corriente año de entera conformidad con la ley de 18 de Agosto de 1824 y Articulo 5to del Reglamento supremo de 21 de Noviembre de 1828. Y para resguardo de la parte de Don Andres Pico lo hago asi saber.

Sello

Dado en la Ciudad de los Angeles capital del departamento de California en papel comun por falta del sellado à los quince dias del mes de Junio de mil ochocientos cuarenta y seis.

Pio Pico

José Matias Moreno
Secto Int.

Filed in Office January 22nd 1853.

Geo. Fisher Secy.

"D"
Translation of Minutes Departmental Assembly

/ Translation /

Pio Pico Constitutional Governor of the Department of Californias.

The Most Excellent Departmental Assembly in Session of to day sanctions fit to decree as follows.

The Cession made in favor of Andres Pico of eleven Square Leagues of land upon the rives of the "Moquelemos" which was ceded to him by the superior Departmental Government according to the grant issued under date of the sixth of June of the current year, in entire conformity with the Law of the 18th of August 1824, and with the Fifth Article of the Supreme Regulations of the 21st of November 1828, is hereby approved.

And for the protection of Andres Pico I thus make it known.

Given in the City of Los Angeles Capitol of the Department of Californias on common paper for want of stamped, this fifteenth day of June Eighteen hundred and forty six.

Pio Pico
/ Flourish /
José Marias Moreno
/ Flourish /

Fran Gutl.

Filed in Office Sept. 22nd 1852
Geo. Fisher Sec.

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Andres Pico
vs
The United States

Claim for a place called Mogueleamos in the county of containing eleven square leagues.

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Opinion by Commissioner S.B. Farwell

The Petitioner in this case states that he presented his petition for a grant to the above named premises to Governor Pio Pico in the month of May 1846.

And it appears from the documents on file, that the said Governor on the 6th day of June 1846, issued his grant for the same with boundaries as follows to wit:

Bounded on the north on the southern shore of the river "Mogueleamos" on the east by the adjacent ridge of mountains, on the south by lands of Mex Gulnek, and on the west on the estuaries of the shore.

The grant is issued with the usual conditions. And on the 15th day of June 1846, received the sanction of the Departmental Assembly

There is no proof of any segregation nor has the Commission any knowledge of how much land is contained within the boundaries as set forth.

There is no proof of any possession, occupancy, cultivation or improvement whatever nor of the performance of any of the conditions of the grant.

The action of the Departmental Assembly in the opinion of the Board has not dispensed with the necessity of a performance of the conditions of the grant necessary to be performed under the provisions of the Mexican Colonization Law

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to entitle the Grantee to the benefit of the same nor of a segregation of the land, that the quantity of land granted may be reduced at least to a reasonable degree of certainty.

The Board are of the Opinion that the proofs and exhibits in this case are insufficient to establish the validity of the Claim so as to entitle the petitioner to a confirmation of his grant and that the same should be rejected.

Rejected.

No. 359

Andres Pico
vs
The United States

In this Case on hearing the proofs and allegations it is adjudged by the Commission that the claim of the Petitioner is not valid and it is therefore decreed that the application for a confirmation be denied.

Decree

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

Filed in Office Oct 3rd 1854.
Geo. Fisher Sec.

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 decisions 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.

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 Nineteen — pages, numbered from 1 to 19, 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. 357 on the Docket of the said Board, wherein

Andres Pico is —

the Claimant against the United States, for the place known by the name of "Moquelamos."

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

Geo: Fisher.

Sy.

U. S. DISTRICT COURT,

Northern District of California.

No. 184—

THE UNITED STATES,

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vs.

ND

Andres Pico

TRANSCRIPT OF THE RECORD

FROM THE

BOARD OF U. S. LAND COMMISSIONERS,

In Case No. 357.

Filed, April 3d — 1856,

John A. Monroe,

Clerk

Case No. 357

On appeal from the Board of U. S. Land-Commissioners

Andreas Pico
app^{lt}

vs.

The United States
app^{lee}

claim for "Moquelumne"

Sir!

Please to take notice that the claimant in the above case will prosecute the appeal therein.

San Francisco
May 9th 1855

Yours respectfully
Clarke, Taylor & Beck
Atty's for claimant.

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

No 184 —

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

Andrews Price
app lt

vs

The United States
app lee

Claim for
"Mosquelonne"

Notice of appeal —

Filed May 9th 55
Sam'l A Moore
Clk

Clarke Taylor & Beckh —
Attys for claimant.

Andres Pico
vs
The United States.

Claim No 357 on Docket of the Ret. Board of Land Commissioners.

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

Notice is hereby given in conformity to law, that the above mentioned claimant appeals from the decision of the Board of Ret. Land Commissioners by which his claim to the tract known as the "Moquelumes" has been rejected

Andres Pico
by his Attorney
Stanly & King

San Francisco
9 May 1855.

No. 184 -

Andres Pico
vs
The United States

Notice of Appeal.

("Moquelumnes")
Land Case No 357

Filed May 12, 1855,
by W. H. Chevers,
Deputy.

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(2)

Docket No. 184.

Andres Pico
vs
The United States } Appeal.

To the Honble Ogden Hoffman Junr Judge of the United States' District Court for the Northern District of California.

The petition of Andres Pico a Citizen of California respectfully represents,

That under the provisions of the Act of Congress of the 3^d March 1851, he presented a petition to the Commissioners appointed under said Act to examine claims to land in California praying for the confirmation of his claim to the tract of land therein described called "Moquelumez" situate in the present County of Sacramento California, under a grant from Pio Pico Governor of California dated 6th June 1846, and accompanied it by evidence of his title; and to which for more full and particular description he begs leave to refer.

That his said claim, being designated as No. 357 on the Docket of the said Commissioners was rejected by them on the 3^d October 1854; that the said land is situate within the limits of the Northern District of California; that a transcript of the proceedings and decision of the Commissioners in the case, was filed in the Office of the Clerk of the Court for that District on the 3^d of April 1855; and on the 9th May 1855 notice was filed with the said Clerk that your petitioner appealed from such decision.

Your petitioner prays for a rehearing of the case upon this appeal; that the said decision

of the Commissioner may be reversed and annulled; and that the Court will make such decree and order as may be necessary and proper to recognize, confirm, and declare valid his title and claim to the premises mentioned and referred to in his said petition and evidence of claim.

And your petitioner will ever pray &c

Stanly & Hoag
Attys for Claimants

San Francisco
11th June 1855.

No 184

Andres Pico
to
The United States } Land
Appeal

"Mogueloumes"

Petition for review.

Received a copy
this day
11 June 55. J. W. Page
U.S. Dist Atty
pr John H. Godfey

Filed June 11, 1855.
by Chever
Deputy

Clerk to Atty for claimants

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UNITED STATES DISTRICT COURT,
Northern District of California.

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San Francisco, Dec 31st 1855

ON this day, before Levi A. Morrow a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came Charles M. Webber. W.E. a witness produced on behalf of the Claimant in Case No. 184, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 357 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: Edward Stanley for Claimant and A Glassell on behalf of the United States -

QUESTION BY Claimants Counsel. Your name age & residence
Answer. I reside in Stockton San Joaquin County - and am forty one years of age -

I know the Rancho called Magnoulume claimed by Don Andreas Pico - Witness being shown the description of the grant and being asked if from the description there would be any difficulty in identifying the land granted says -

Some of the boundries are positive by natural lines -

the Southern line being established by the boundary line of my own claim, the Northern bounded by a river the Mogolumne and the Western line by the edge of the Tulare - Then would from the description be no difficulty in identifying the boundaries - The description I allude to is that contained in the Manuscript of the Record now on file in the U.S. District Court for the Northern District of California

I cannot say how much the boundaries I have named contain - After June 1846 the State of the country was such that Jundical possession could not have been given to the Land - Capt Sutter was the Officer who presided over that section of the country and was empowered to give Judicial possession if the same could have been done -

In the fall of 1848 I made a gift to Don Andreas Pico, of certain improvements which I had made on his land consisting of several substantial corrals and a small building. Pico had no stock on the Rancho nor a tenant that I know of from my personal knowledge. The first I knew of the existence of the Mogolumne claim was in the fall of 1848. Indian hostilities existed in that section

hostilities existed in that section

which prevented the settlement of the country.

Cross-Examined

I have no interest whatever in the result of this suit

Charles M. Weber

No. 184

U. S. Dist. Court.

Andres Pico.

— vs —

The United States.

Deposition of
C. M. Webber.

Filed January 10, 1856,
by Chever
Deputy.

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No. 184.

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

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Andres Pico, Appellant
vs
The United States, Appellee

} Answer "Mexicanos"

The respondents for answer to the petition filed in this case, answer and say

It is true that the lands mentioned in said petition, and in said transcript of the proceedings before the said Board of Commissioners, lie within the said Northern District of California, and within the jurisdiction of this Court

But the respondents deny that the alleged title to the said land is valid, and aver that the same is invalid, and pray that the decision of the said Board be affirmed, and that the title of the petitioner be decreed to be invalid

A. Russell
Actg. Dist Attorney

No 184.

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

Andres Pico
vs
The United States
"Mesquelamo"

Answer

Filed April 28th 1856
Chevers,
Deputy.

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Pleasant

No 184.

Andres Pico
vs
The United States.

Appeal.
"Mogualome"

To the Honble Ogden Hoffman Junr Judge of the United States District Court for the Northern District of California

The petition of Andres Pico a citizen of the United States respectfully represents -

That under the provisions of the Act of Congress of the 3^d of March 1851, he presented a petition to the Commissioners appointed under said act to examine claims to land in California praying for the confirmation of his claim to the tract of land therein described called "Mogualome" situate in the present County of under a grant made in his favor by Governor Pio Pico on the 6th of June 1846, and accompanied it by evidence of his title; and, to which for more full and particular description he begs leave to refer.

That his said claim being designated as No 357 on the Docket of the said Commissioners was rejected by them on the 3^d October 1854. That the said land is situate within the limits of the Northern District of California; that a transcript of the proceedings and decision of the Commissioners in the case, was filed in the Office of the Clerk of the Court for that District on the 3^d of April 1855, and on the 9 May 1855 notice was filed with said Clerk that your petitioner appealed from such decision.

Your petitioner prays for a hearing of the case upon this appeal - that the said decision of the Commissioner may be reversed and annulled, and that the Secretary will make such direction and order as may be necessary & proper to recognize confirm & declare valid his title and claim to the premises mentioned and referred to in his said petition and evidence of claim.

And your petitioner will ever pray &c

Andrew Price

by

Stanley & King

Atty's

No 184

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

Andres Pico
vs
The United States
"Moquelumne"

Petition for review -

Filed April 28th 1856
Chas. C. Dupuy
Deputy.

+

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Stanly Hing
atty

UNITED STATES DISTRICT COURT,
Northern District of California.

Andreas Pico
— vs —
The United States.

San Francisco, Dec. 5th 1853

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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 Daniel Murphy a witness produced on behalf of the Claimant in Case No. 184, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 357 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: Edward Stanley for Claimant — & the U. S. Dist. Atty J. A. Glassell, Esq.

QUESTIONS BY

Counsel for claimant.

What is your name age and place of residence?

Answer — My name is David Murphy — My residence Santa Clara County and I am twenty nine years of age —

I know the Rancho Moquelumnes claimed by Don Andres Pico and first knew it in 1844 and in 1848. I saw Don Andres Pico on it with some twenty men and some horses —

when I next saw it - it was about May 1849. and I had about one thousand Cattle on it and saw Don Andreas Pico & he gave his consent to my occupying a part of the Ranchos with my Cattle & in June I put on the Ranchos about fifteen hundred more - Don Andreas then claimed the Ranchos. Sutter was then the nearest Officer who could have given Judicial possession

I was with the consent of Don Andreas Pico on the Ranchos about Eighteen Months -

Dan Murphy

Cross-Examined

I have no interest whatever in the Ranchos -

Dan Murphy

Sworn & subscribed
this 5th Dec. 1855,
before me
Wm A Maxwell
N. P. Com Pl

No. 184

N. D. Dist. Court.

Andreas Pico.

— vs —

The United States.

Deposition of
Dan. Murphy.

Filed May 31, 1856.
Thomas,
Deputy.

7

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

Court
No 184.
Transcript
No 357.

Andres Pico, Appellant, vs The United States, appellee	Decree of Confirmation "Moquelanes"

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Stated Term, April 24th 1857.

This cause coming on this day to be heard upon the transcript of the proceedings and decision of the Board of Land Commissioners of the United States to ascertain and settle the private land claims in the State of California, and the papers and evidence in the case, and the pleadings filed in this Court, and Counsel having been heard on the part of the United States, and for the claimant;

In consideration of all which the Court is of opinion that there is error in the decision of the said Board, and that the same should be, and is hereby, reversed.

And this Court doth order adjudge and decree that the title of the said claimant to the land described in said transcript is valid, and the same is hereby confirmed.

The land of which confirmation is hereby made is of the extent of Eleven Square leagues and no more, and is known by the name of "Moquelanes" and is situate on the River Moquelanes, bordering upon the North upon the Southern bank of said River, on the East on the adjacent ridge of mountains

on the South with the land of Mr Gulnac, and upon the West upon the estuaries of the shore, as described in the Original deed and grant of the same by the Governor of California on the sixth day of June 1846, a copy of which is on file in the transcript in this Case.

Ogden Hoffman
U. S. Dist Judge

Docket No 184.

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

Andres Pico
vs.
The United States

"Moquelomes"

Decree of Confirmation

Filed April 24. 1857.
W. H. Chevers.
Deputy.

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(9)

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At a Stated Term of the District Court of the UNITED STATES OF AMERICA, for the Northern District of California, held at the Court Room, in the City of SAN FRANCISCO, on Friday the 4th 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.
Andres Pico

D.C. 184: L.C. 307
"Moquelumnes"

In this case, on the application of the United States 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 Dec 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.

184

United States District Court, Northern District of California.

The United States

vs.

Andres Pico

ORDER.

Granting appeal

Filed 4th September 1857

Geo A. Monroe Clerk.

By

Deputy.

(10)

184 ND

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Appeal to the Supreme Court of the United States from the District Court of the United States for the Northern District of California

The United States
vs
Andreas Pico
Moquelumos

To

Stanly & King Esqrs
Attys for Claimant

Take notice that on Friday the 12th day of August A D 1859 at 11 o'clock A M. before Butler McAllister Esq U. S. Commissioner at his office in the City & County of San Francisco I shall proceed to take the depositions of Pio Pico, Charles Brown, Daniel Murphy J. W. Stevenson R. C. Hopkins to be read in evidence in this cause Dated San Francisco. August 9 1859.

Tully R. Wise.
Acting U. S. Dist. Atty.

Appeal to the Supreme Court of the U. S. from the District Court of the U. S for the Northern District Of California

184 ND

The United States
vs
Andreas Pico

Notice of Examination of witnesses

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Filed Aug 11, 1859
Cutler McAllister
D C

184 ND
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The President of the United States of America,

To Alfred G. Arnold

GREETING:

We Command you, that, all and singular business and excuses being laid aside, you and each of you appear and attend before Cutler McAllister a Commissioner appointed by the Circuit Court of the United States of America for the Districts of California, at his office, in the U. S. Court House, in the City of San Francisco, in the Northern District of California, on the 27 day of Dec at 10 o'clock in the Fore noon, to testify all and singular what you and each of you may know in a certain cause now pending and then and there to be tried between

The United States
&
Andres Pico

And this you, or either of you, are not to omit, under the pains and penalties of the law.

Witness, The HON. ROGER B. TANEY, Chief Justice of the Supreme Court of the United States of America, this 20 day of Dec in the year of our Lord one thousand eight hundred and fifty-9 and of our independence the eighty-4th.

ATTEST: Geo Pen Johnston
Clerk.

BY Cutler McAllister
Deputy Clerk.

Northern District of California. S.S.

O. P. Sutton, being duly sworn says that he is a Citizen of the State of California and over the age of twenty one years, that he served the within subpoena personally by handing a copy of it to the within named witness and at the same time exhibited to him the original

O. P. Sutton

Subscribed & sworn to before me 20 Dec 1859
Cutler McAllister
U.S. Comr

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

The United States
vs.
Marcus Rice

SUBPŒNA.

Filed Dec 20 1859
Cutler McAllister Clerk
By ..... Dep. Clerk.

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612 - 195 N.D.
3 Cal - 184
446 - 199
449 Cal 372 S.D.
10 " 297 S.D.
Cal 355 S.D.

MARSHAL'S RETURN.

I have served this writ personally by copy on

_____

_____

_____

this _____ day of _____ 185 .

..... *U. S. Marshal.*

..... *Deputy Marshal.*

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In the District Court of the United States

FOR THE NORTHERN DISTRICT OF CALIFORNIA.

The United States,

v.

Andreas Pico

IN LAND CASES.

Dist. Court No. 184

Land Com. No. 357

BE IT REMEMBERED, that on this First day of June A.D., 1861, at the City of San Francisco, in the District aforesaid, before me, WM. H. CHEVERS, a Commissioner duly appointed by the Circuit Court of the United States for the Districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses, in civil causes depending in the Courts of the United States, pursuant to the Acts of Congress in that behalf, personally appeared Pio Pico a witness produced in behalf of Claimants in the above entitled cause, now pending in said Court under the Acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows: his evidence being interpreted by Ramon de Zaldo a sworn interpreter.

PRESENT: Ed. Stanley Esq for Claimants - U.S. Atty. & J. B. Williams for U. States - and P. della Torre

QUESTIONS IN BEHALF OF THE Claimants

Question 1st,

What is your name, age residence and occupation?

Ans Pio Pico - 60 years - Los Angeles

County - Rancho

2 Look upon paper marked Exhibit Pico No 1. ~~and~~ annexed to this deposition, and say whether you have seen the original thereof in the office of the Surveyor General - and whether or not your signatures to said originals are genuine?

Ans. I have been taken to the office of Surveyor General - to see the said originals - and my signatures thereto are genuine -

3 Please state whether at the time this Grant was made any map or petition was presented to you by Andreas Pico?

Ans. Don Andreas Pico must necessarily have presented a petition or otherwise the Governor could not issue a title, and define

its boundaries.

4 Do you know what was done with the petition and map?

Ans. They must be in the Archives.

5 Are you acquainted with the hand writing of José Matias Moreno? And are his signatures to the papers above referred to genuine signatures?

Ans. I know his hand writing & signature and their signatures are the same that he used at that time

6 Where does José Matias Moreno now reside?

Ans. In the Territory of Lower California

7 Do you remember any

facts or circumstances connected with the issuing of this Grant that can call to your mind the time of its issuance?

Ans. I cant recall any other circumstance, but that Andreas Pico being my brother, and having often required of me to make him a Grant, which I had from dilicacy refused, I at last yielded to his request.

8 Was this Grant issued and the Approval of the Departmental Assembly issued at the time they bear date?

Ans. Without doubt.

9 What was the distance between Los Angeles and Santa Barbara and what time usually occupied in travelling it, on horse back?

Ans. This 40 odd leagues - and the trave could be performed, at leisure inside of one day -

10 Did not Andreas Pico been a Soldier in the service of Mexico for several years prior to 1846.?

Ans. (Objected to by U.S. as irrelevant)

Ans. Yes

11 Did he or did he not claim that for these services he was entitled to land, as well as other citizens?

(Same objection)

Ans. He did -

12. Do you know when Andreas Pico first visited the Ranchos "Mokelumnes", or how he became acquainted with

What Section of country?

Ans. I do not know when he first visited it, but in 1842 he was at the North. And in 1843 and 1844 he was at the North with Michilimacinac.

13

What disposition was made of the Archives in 1846, after the last adjournment of the Departmental Assembly?

Ans. I do not know the disposition that the Secretary of the Departmental Assembly made of his record or Archives. I withdrew from the Country, and, prior to my departure, saw the Archives of the Government carefully packed up.

1

Cross Ex.d by U. States

14. What relation to you is Andreas Pico - the claimant in this case?

Ans. Brother

15. Prior to the date of this grant had you made any grants or concessions of land to Andreas Pico?

Ans. I believe not

16. Did you make any after the date of this grant?

Ans. I believe not

17. Did you at any time make sales of public lands to this claimant?

Ans. Of no other lands but those belonging to the Missions - They were not considered public lands but

belonged to a community -

18 When did you make those sales and what Mining lands did you sell to him -

(Counsel for Claimant objects to question as irrelevant & ~~and Counsel for Claimants advises Witness of his objection~~, and Witness is not bound to answer -)

Ans. (Objected to as irrelevant)

Ans. This question does not belong to this case - Willing as I am to give testimony of my acts as Governor in every respective case - I decline answering this question -

19 By whom was Moreno appointed Secretary?

Ans. By the Government of the Department - I mean by myself -

20 What was the date of his appointment

Ans I cannot remember

21. Did you remain in Los Angeles during the whole month of June 1846?

Ans. I do not remember precisely - I cannot remember when I left Los Angeles - I may have been there the whole month of June - but know I was there a part of that month -

22. Did you leave Los Angeles at any time between the first of June and the middle of July?

Ans. I cannot fix the day of my leaving Los Angeles, but towards the 18th or 20th of June I went out of Los Angeles.

33.

For what purpose did you leave Los Angeles? And where did you go?

Ans. I left, on a visit to the Pueblos of the Northern part of the State -

34

How far North did you go?

Ans. I reached as far North as Santa Margarita - the Rancho of Estrada, North of San Luis Obispo -

35

Were there any political disturbances which induced your visit to the North?

Ans. If it is the last question that ~~the~~ ~~you~~ is to be put to me, finding that they have no relevancy to this case, as I have come here to survey my own signature, I will answer it - but if this is to go on about acts of my former position,

from this moment I decline answering -

Counsel for U States informs Witness through the Interpreter that it is not the last question which it is proposed to put to him - That the U.S. claim the right ~~upon~~ which emanates from all points which the law permits them to examine (&c.)

26 - Question repeated -

Answer - I dont remember

27 To refresh your memory, as you say you dont remember, I must ask you whether there was not some political difference between General Castro and yourself as Governor, which induced your visit to the North -

Ans. I have to repeat once more. That that question does not appertain to this case, and that I am consider myself bound to reveal what took place at that time between the Commander General of California and myself as Governor.

28 Do you recollect the difference between yourself and Genl. Castro?

Ans. As a matter of courtesy I am willing to give the history of the whole country. ~~but~~ It is not the lack of memory. It is that I do not feel myself bound to reveal the acts of my former Government.

29 While you were at the North did you meet Genl. Castro?

Ans. He met at Santa Margarita.

30 What was the date of your meeting him at Santa Magnuita?

Ans. I dont remember.

31 How long did you remain at Santa Magnuita.

Ans I have no recollection of the length of time I was there.

32 Where did you go from Santa Magnuita?

Ans. I returned below.

33 When did you arrive at Los Angeles, on your return?

Ans. I dont remember the day I arrived. It was in the middle of the year 1846

34 Who accompanied you on your visit to the north?

Ans. There were several deputies and a force commanded by Ananias Pico. Also by Secretary Moreno.

35 Do you remember receiving a Petition of Ananias Pico for this tract of land, and where were you, and at what time, did you receive it?

Ans. I do not remember as to the date of the petition, but it was probably at Los Angeles ~~where~~ that I received it.

36 Do you remember the diseño which should have accompanied the Petition?

Ans. I have no remembrance even that he presented a diseño

37 Did you refer the petition to any officer for an Informe, and if so to whom did you refer it?

Ans. Upon his Petition I signed to him the Grant myself - I did not refer it to any officer -

38 Did you refer the Grant and Petition to the Departmental Assembly?

Ans. I presented to the Assembly the title recommending it for its approval -

39 Did you deliver the title to Andreas Pico before or after the approval of the Departmental Assembly?

Ans. I have no distinct recollection of it.

40. Was it the custom of the Governor of California to send the "Expediente" or ~~the title~~ "titulo" ~~"Título"~~ to the Departmental Assembly, for the purpose of obtaining its approval to a concession of land -

Ans. The usual custom was that the title papers were given by the Governor to the interested party, who afterwards either by themselves or through the means of the Government applied to the Departmental Assembly for its approval.

41 What papers accompanied the application for an approval by the Assembly?

Ans. The title paper (titulo)

42 Who applied for the approval of the Departmental Assembly in this case - Ananias Pico or Yourself?

Ans. I do not distinctly recollect - but am lead to believe I did it at the request of my brother.

43. Look at paper, purporting to be certificate of approval of the Departmental Assembly, filed as the original, by the Claimant

with this case, and say if that is your signature to it, and if you recollect the circumstances connected with it?

Ans. (The original certificate of approval brought before the Comm. by Hopkins, keeper of archives - Surr. Genl. Office, I turn to the Witness,) produced from the records of the Land Commission)

Ans. On perusal of this paper I find that it has my signature - that it is in the handwriting of my Secretary and signed by him - I do not remember any other circumstance - but that fixes my mind that I was there on the 15. of June in Los Angeles -

44. Do you recollect the fact that the Departmental Assembly did confirm this Grant?

Ans. I remember it because I saw it my name to the paper -

45. Do you remember the approval of the Departmental Assembly independently of this paper last shown you, or do you only think it was approved because you see this paper?

Ans. Had I been shown the title paper alone, and the question was asked me - I should have said "I do not remember" - but on seeing said paper it fixes my mind that it was approved.

46 Having seen the paper do you now recollect the approval of the Assembly, or, is your belief of the approval only a conclusion that you draw from seeing the paper?

Ans. I believe it was approved because I see it here certified -

47 You have said upon your direct examination that both the papers shown you were signed by you at the time

Why purport to bear date - do you recollect this distinctly, or is it only a conclusion from seeing the papers?

Ans. Had I not been presented the title paper in this case - and been asked if I remembered its date, I would have said "I do not", although I remembered I had made a grant to my brother - on presentation of said papers, under my own signature I came to the knowledge of their date -

48

When you signed the certificate of approval of the Departmental Assembly, did you certify the fact of approval of your own knowledge - or did you certify from information given you by any one else -

Ans. I must have been informed by the Secretary, who was the channel through whom

the Governor became acquainted with such an approval:

49 Then you did not know yourself of the action of the Departmental Assembly?

Ans. No. I don't ~~member~~ remember. It was not necessary that I should be present.

50. What day did you leave Los Angeles for Mexico

Ans I believe it was in the night of the 12. or 13. of August 1846.

It is admitted by the counsel of the United States that Exhibit Pico No. 1. annexed to this deposition ~~was produced~~ contains correct copies of the originals filed by the claimant before the Land Commission. said originals being now produced before

The Commr. G. K. C. Hopkins
Keeper of the Spanish Archives
of Surveyor Genls Office -

Re-direct

57

Please State if this Examination has called to your mind any conversations had with your brother when he applied to you for his Grant? If so, State it -

Ans. - Having lost the title Papers of "Samul", my Rancho - granted to me formerly by General Victoria, I granted it to myself while Governor - And my brother aware of that fact, kept demonstrating to me about my delicacy in granting him the "Mokelumnes, saying he had as much right to a Grant as I had myself -

Pio Pico

Subscribed & sworn
to before me this
1: day of June
A.D. 1861.
W. H. Chever
U.S. Comr.

184 N.D.
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No. 184

UNITED STATES DISTRICT COURT

Northern District of California.

IN LAND CASES.

THE UNITED STATES,

V.

Andreas Pico

DEPOSITION OF

Pio Pico

on part of Claimants

10

Filed June 1 1861

June 1. 1861

W. H. Chevers, *Clerk.*

Pais — $13.70

184 ND

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Edward Stanley Esq.
$6.00 Paid.

Pio Pico Gobernador Constitucional del Departamento de California

Por cuanto Don Andres Pico, mejicano de nacimiento ha pretendido para su beneficio personal y el de su familia el terreno conocido con el nombre de "Moquelumos" en estencion de once sitios de Ganado mayor: practicadas previamente las diligencias y averiguaciones consermientes 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 las presentes letras, á reserva de la aprovacion de la Excma. Asamblea Departamental, y bajo las condiciones siguientes.

1.ª Será dueño en propiedad de once sitios de ganado mayor en el rio de "Moquelumos" que linda al Norte con la orilla Sur de dicho Rio: al Oriente con la Sierra inmediata, al Sur con el terreno del Señor Gulnak, y al Poniente con los Esteros de la playa.

2.º El terreno que se le adjudica, lo mantendrá libre de fianza, hipoteca ni otro gravamen alguno, ni enagenarlo en poder de manos muertas. ———

3.ª Pedirá al Juez respectivo que le dé la posesion jurídica en virtud de este título por el cual se le demarcarán los linderos, poniendo las mojoneras de estilo.

4.ª Podrá cercarlo sin perjudicar las travesías caminos y servidumbres; lo disfrutará libre y esclusivamente destinandolo al uso y aprovechamiento que mejor le conviniera, pero no podrá enagenarlo antes de cuatro años de haber recibido la judicial posesion.

5.ª Si contraviniere á estas condiciones perderá su derecho al terreno y será denunciable por otro que carezca de terreno y lo pretenda.

Por tanto, mando, que teniendose el presente título por firme y valedero, se tome razon de el en el libro á que corresponda, y se le entregue al interezado para su resguardo y demas fines.

Dado en la Ciudad de los Angeles, Capital del Departamento de California, en papel comun por falta de sellado, á los seis dias del mes de Junio del año de mil ochocientos cuarenta y seis.

Pio Pico

José Matias Moreno
Srio Int.º

Queda tomada razon de este Superior despacho en el libro respectivo.

Moreno

B.

Exhibit No 1. to the deposition of N A Den taken in No 357 H.S.T.

No. 357.

Andres Pico

Moquelamo

Doc H.S.T. No 1 and to the Depo. of N. A. Den taken before Com.

H.S. Thornton

Filed in Office June 22 1853 –

Geo. Fisher

Clerk

Recorded in Book A. page 616 San Joquin County Records. July 2d AD 1857 at 12. Oclock M.

A A Mix

County Recorder

Recorded in Book of Rec: of Ev: Vol. XIV. pages 202 + 203

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PAGE 72

Pio Pico, Gobernador Constitucional del Departamento de California.

La Excma. Asamblea Departamental en Sesion de hoy tubo á bien decretar lo sigte. "Se aprueva la concesion hecha á favor de Don Andres Pico, de ocho sitios de ganado mayor en el rio de los "Moquelamos", que le fue concedido por el Superior Gobierno Departamental, segun titulo librado con fecha seis de Junio del corriente año, de entera conformidad con la ley de 18 de Agosto de 1824 y artículo 5.º del Reglamento Supremo de 21 de Noviembre de 1828." — Y para resguardo de la parte de Don Andres Pico lo hago así saber.

Dado en la Ciudad de los Angeles, capital del Departamento de California, en papel comun por falta de sellado, á los quince dias del mes de Junio de mil ochocientos cuarenta y seis.

Pio Pico

José Arcadio Moreno
Srio. Int.º

5.

Exhibit No 2 to the deposition of N. A. Den taken in No 357.
H. J. T.

No. 357.

Andres Pico

Moquelamo

Doc. No. 2 - amd. to the Depo of N. A. Den taken before Com.
H. J. Thornton

Recorded in Book A. page 117 San Joaquin County Records July 2d. A.D. 1851, at 12 o'clock M.

A. A. Mix
County Recorder

Filed in Office Jany 22d 1853.
Geo. Fisher

Recorded in Book of Rec. of Ev. vol XIX. pages 203 & 204.

Exhibit 1.

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PAGE 75

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

I, **J. W. MANDEVILLE,** Surveyor General of the United States for the State of California, and as such, having in my office, and in my charge and custody, a portion of the **Archives** of the former **Spanish** and **Mexican** Territory, or Department of **Upper California,** as also the papers of the late Board of Commissioners to ascertain and settle the private land claims in California; by virtue of the power vested in me by law, **Do Hereby Certify,** that the five preceding, and hereunto annexed pages, of tracing paper, numbered from one to five inclusive, exhibit a true, full, and correct copy, of two (2) original documents, together with the endorsements thereon, as the same appear on file in Case No. 357, on the docket of said Board of Commissioners.

EXAMINED AND FOUND CORRECT.

R. C. Hopkins. Keeper of Archives.

In Testimony Whereof, I have hereunto signed my name officially, and caused my Seal of Office to be affixed, at the City of San Francisco, this 30th day of May 1861.

J. W. Mandeville U. S. Surveyor General, for California.

U.S. Dist. Court

The United States

vs

Amanias Pico

Exhibit Pico

No. 1.

Connected to deposition of Pio Pico

Filed June 1, 1861

W. H. Chevers,
Clerk.

10 1/2

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 Andres Pico, appellant, and the United States, appellee, the decree of the said District Court was in the following words, viz:

"The Court is of opinion that there is error in the decision of the said board, and that the same should be and is hereby reversed.

"And this Court doth order and adjudge, and decree that the title of the said Claimant to the land described in said transcript is valid, and the same is hereby confirmed. The land of which confirmation is hereby made is of the extent of eleven square leagues and no more, and is known by the name of "Moquelomes", and is situate on the river Moquelumne, bordering upon the north upon the Southern bank of said river, on the east on the adjacent ridge of mountains, on the South on the land of Mr. Gulnac, and upon the West upon the estuaries of the shore, as described in the original decree and grant of the same by the governor of California, on the sixth day of June, 1846, a copy of which is on file in the transcript in this case".

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 reversed, and that this cause be and the same is hereby remanded to the said District Court for further proceedings to be had therein in conformity to the opinion of this court. — (12 March

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....~~ $
$

~~Taxed by~~

Wm. H. Carroll

Clerk of the Supreme Court of the United States.

No. 184.

No. 69, December Term, 1859.

MANDATE

SUPREME COURT UNITED STATES.

U. States vs Rico

Filed June 12, 1861.
A. G. Stevens
Clerk.

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At a Stated Term of the DISTRICT COURT OF THE UNITED STATES OF AMERICA, for the Northern District of California, held at the Court Room in the CITY OF SAN FRANCISCO, on Wednesday the 12th day of June in the year of our Lord one thousand eight hundred and sixty one.

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States.
v.
Andres Pico.

D.C. 184.

And now at this day comes Edward Stanly, Esq. Counsel for the Claimant, and presents the Mandate of the Supreme Court of the United States in the above cause, and moves that the same be filed, whereupon it is ordered by the Court that the said Mandate be filed, and made a part of the records of this Court in this cause.

No. 184.

UNITED STATES DISTRICT COURT

Northern District of California.

The United States.

v.

Andres Pico.

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

Filed June 12, 1861.

W. H. Chevers,

Clerk.

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No 700
U. S. Land Commission
Rio Rios and Andres Rios

Andres Rios one of the claimants in the above entitled case being duly sworn doth depose and say, that about the month of May A.D. 1841. Juan B. Alvarado then Governor of California executed and delivered to Rio Rios and this deponent a grant in full property of the lands and Rancho claimed in this case called Santa Margarita and San Onofre, that said grant was left in the custody of said Rio Rios where it remained until about the year 1846 when said Rio Rios left California for Sonora - that said Rio Rios informed deponent that said grant was left with his wife then living on said Rancho Santa Margarita and that the desk in which said grant with other papers had been deposited was broken open and rifled of its contents. That this deponent has made diligent search for said grant and

D

2.)

has frequently examined and searched at Santa Margarita and other places where said grant was likely to be found, without finding the said grant. That at the time said Rio Rios left California in 1846 the place Santa Margarita then the stopping place of said Rio Rios was taken forcible possession by a Military force of the United States and given up to plunder by them on retiring. after said Rio Rios had left for Sonora that deponent believes said grant with many other valuable papers belonging to deponent and said Rio Rios were then destroyed - that said grant and other papers so left by said Rio Rios at Santa Margarita in 1846 have never been found by this deponent

Andres Rico

Subscribed and Sworn to, before me on this 15th day of March A.D. 1853

Peter Lott. Commissioner

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

I, [illegible] BEALE, *Surveyor General of the United States for the State of Ca[illegible], and as such, having in my office, and in my charge and custody, the pap[illegible] the late Board of Commissioners to ascertain and settle the private lan[illegible]s in California; by virtue of the power vested in me by law,* **Do [illegible] Certify,** *that the* 2 *preceding, and hereunto annexed pages, numbe[illegible] one to* 2 *inclusive, exhibit a true, full, and correct copy, of* the petition of Andres Rio together with the following endorsement "No. 700. U. S. Land Commission, — Rio Rio & Andres Rio — " San Margarita & San Onofre — Deposition Andres Rio taken before commissioner Peter " Dent — Filed in Office March 15th 1855 — Geo " Fisher — Recorded in Ex. B. vol 11 p. 583 " E[illegible] & Ly — Geo Fisher" — . As the same appears on file in case No 700 on the docket of said Board of Land Commissioners

In Testimony Whereof, *I have hereunto signed my name officially, and caused my Seal of office to be affixed, at the City of San Francisco, this* 23 *day of* Jany *18*62

E. F. Beale

U. S. Surveyor General, for California.

No. 184

U. S. Dist. Court

The United States

v.

Andres Pico

"Exhibit United States No. 5" for U. S.

Filed March 31st 1862
W. H. Chever
Clerk

Judge Lowe
$2.50

No 700
Pio and Andres Pico
vs
The United States

In this case on hearing the proofs and allegations it is adjudged by the Commission that the claim of the petitioners is valid, and it is therefore decreed that their application for a confirmation thereof be allowed.

The land of which confirmation is hereby given is situate in the County of San Diego containing twenty square leagues and bounded as follows commencing at a point on the mountain called Tinajas from thence South to a hill known as the Moro. from thence in a direct line to the sea coast striking the coast on the North bank of the valley of San Sans Ray. thence along the coast to the boundaries of "las Flores" and along said boundaries to the point of San Mateo from thence continuing along a ridge of a hill on the Northern side of

1

(2)

the valley of Talega to the foot of the mountain. from thence along the foot of the mountain to the place of beginning

Reference being had to the map on file accompanying the expedente and the depositions of John Foster and J. D. Warren

Commissioners { R. Aug Thompson
S. B Farwel.

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PAGE 89

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

I, **E. F. [illegible]ALE,** *Surveyor General of the United States for the State of Californ[illegible]ed as such, having in my office, and in my charge and custody, the papers of [illegible]late Board of Commissioners to ascertain and settle the private land cla[illegible]in California; by virtue of the power vested in me by law,* **Do Herel[illegible]tify,** *that the* 2 *preceding, and hereunto annexed pages, numbered fro[illegible] to* 2 *inclusive, exhibit a true, full, and correct copy, of* the Decree of the U. S. Land Commission together with the following endorsement

" Rio [illegible] et al. Sta Margarita las Flores
" Decree of Confirmation — Filed in Office
" April 24 1855 — Geo Fisher Secy
" Recorded in Record of decisions Vol 2
" page 31 Geo Fisher Secy"

As the same appears on file in case No 70 on the docket of said Board of Land Commissioners

In Testimony Whereof, *I have hereunto signed my name officially, and caused my Seal of office to be affixed, at the City of San Francisco, this* 23 *day of* Jan 1862

E. F. Beale, U. S. Surveyor General, for California.

No. 184

U. S. Dist. Court

The United States

vs.

Andres Pico

"Exhibit United States No. 2," for U. S.

Filed March 31st 1862
W. H. Chever,
Clerk

Letter Tree
2,050

Session of the 15th day of June, 1846.

The proceedings of the previous session being approved, an official communication from the illustrious ayuntamiento, in the form of a proposal, was reported, to which are annexed an official note from the Secretary of State, in which it is provided, by order of his Excellency the Governor, that the dispositions of the ayuntamiento be transmitted to the Governor for his signature, and a proposition from one of the members of that body requesting that the proper explanation be made, as the powers of the Governor are assigned to them according to the organic laws.

The whole being laid before the body, its decision was considered important, for which it was taken up for discussion, and being sufficiently argued, it was resolved, as a subject of general interest to the Department, that, meanwhile, the ordinances required by article 134 of the 10th power of the organic laws shall be passed; all the measures emanating from the ayuntamientos or the authorities who exercise their functions under the department be submitted

to the Governor, for him to act in conformity with the latter part of the article 152 of the decree of the 20th March 1837: it was then resolved that notwithstanding there would not remain a quorum in the assembly in consequence of the absence of Señor Olvera, to continue its session. The Señors diputados were dispatched, to meet again promptly whenever the Governor shall direct any communication from the districts of the North.

There being no other business, the session was adjourned.

(sgd) Francisco Figueroa, President.
(sgd) Narciso Botello, Secy ad interim.

U. S. District Court.

The United States
v.
Andres Pico.

No. 184.

It is hereby

stipulated and agreed that, for the purposes of this cause, the foregoing is a correct translation of the original record of proceedings of the Departmental Assembly at ~~their~~ its session of June 15. 1846, and that said original is now in custody of the U. S. Surveyor General for California & forms part of the Mexican Archives now in the immediate keeping of Mr R. C. Hopkins

San Francisco, March 29 1862.

E. W. Stanly
Atty. for Claimant

W. H. Sharp
U. S. Atty.

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U. S. District Court

The United States

v.

Andres Pico.

Archive Exhibit No. 1.
filed by United States.

Filed March 31st 1862
W. H. Chevers,
Clerk

[illegible]

1

SELLO TERCERO DOS REALES.

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

Ximeno. Antonio Maria Osio

ADMARITA DE MONT.

Señor Prefecto del 2º Distrito

Pio Pico y Andres Pico vecinos de la municipalidad de San Diego, ante V.S. con el debido respeto y como mas haya lugar en derecho comparecemos diciendo: que habiendonos agraciado el Gobno Superior de este Departamento con los terrenos que comprende el rancho de Temecula, que lo verde la mision de S.n Luis Rey para que en el progresasemos con nuestros bienes que son en bastante cantidad hubimos la posesion de esta gracia provisionalmte en el mes de Octubre proximo-pasado: en este tiempo que hay hasta la fha aun cuando se corr en los tramites de estilo, hemos notado que los Indios de aquel establecimiento repugnan nuestra estabilidad en el mencionado para

gé, alegando razones que aunque careciendo de
meritos suficientes para considerarlas, no-
obstante han impresionado por el riesgo
en que desde luego quedan nuestros intere-
ses, emanado de la averia indicada.
Estos mismos hombres piden que
quedarian mas conformes y de algun
modo satisfechos con que les deje-
ra para su beneficio el rancho ó-
terreno de Temuela habiendoles el
partido de que se haga un Cam-
bio de aquellos por los de Santa
Margarita comprometiendonos en-
tonces darles los mejores pues lo
consiste en una viña de mediano
estado, cuyo valor tasado á juicio de
peritos pagaremos inmediatamente
con ganado vacuno ó caballar segun
convenga al establecimiento y aprec-
ios corrientes. Esta proposicion
que se les puede hacer entonces
nos propio poniendoles á la
vista los buenos resultados

SELLO TERCERO DOS REALES.

Habilitado provicionalmente por la Aduana marilima del puerto de Monterrey, en el Departamento de las Californias, para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

Ximeno

Antonio Maria Osio.

ADUANA MARITIMA DE MONTEREY

que de ella les deben sobrevenir, Calmarán sus animos la in-quietud que se les adelantó por la perdida de Temecula, y nuestras personas, familias, é intereses quedarán asegurados de un modo mas duradero y benefico á ambas partes. El Por Mayordomo de S.M. Luis Rey dará su informe con la imparcialidad que acostumbra y notenemos duda que en el hará constar que en Santa Barbara no hay otros bienes de campo que los nuestros y que no resulta al establecimiento ningun grabamen por este contrato

Por estas circunstancias y la de haber estado en posesion provicional del pequeño parage de su Ovejera desde el mes de Marzo de 1836 como lo acredi

ta el documento que debidamte acompañamos bajo el numero 1. colindante con el de Santa Margarita y en donde parte de nuestros ganados, se han mantenido hasta la fha presente, nos ha inducido á suplicar por medio de esa Prefectura al Exmo Sor. Gob.dor se sirva concedernos permiso para poner en practica el cambio propuesto, incluyendo de consiguiente el diseño respectivo que abraza al mismo tpo. el terreno de San Onofre, bajo las restricciones y demas circunstancias que á S.E. aparezcan convenientes, obligandonos igualm.te á cesar el pago de la viña tan luego como se nos exija en los terminos indicados. Por lo expuesto.

A V.S. pedimos y suplicamos, se digne dar oportunam.te á esta nuestra Solicitud el tramite que le corresponda, é informarla como lo crea de justicia á cuya gracia quedaremos reconocidos

Ang.s Febrero 22 de 1841.

Pio Pico

Andres Pico

Monterey 10 de Mayo de 1841.

Vista la peticion con que dá principio este expediente los informes de la Prefectura del segundo Distrito; el abaluo hecho sobre los bienes raices existentes en el parage de Santa Margarita, la voluntad explicitamente manifestada por los indigenas de San Luis Rey, con todo lo demas que se tubo presente y les con vino de conformidad con las leyes y reglamentos de

las materia se declara á las Señores D.a Pio y Andras Pico, dueños en propiedad de las parages conocidas con los nombres de San Onofre y Santa Margarita, colindante al N. con el punto llamado el Ballecito y la Tinaja al O. con la punta de San Mateo al S. con las lideras del Pueblo de las Flores y el Morro, y al Este con el terreno del Cajon, segun esplica el diseño que corre agregado en el espd.te y bajo de las condiciones de que los interesados satisfaran al establecim.to de San Luis Rey la cantidad de tres mil trecientos pesos, por los bienes raices que se abaluaran en Santa Margarita. Estio á la aprovacion de la Exma Junta Departamental y á las condiciones que se estipularen. Estiendose el despacho correspond.te tomese razon en el libro respectivo para la debida constancia. El Sr. Dn Juan B. Alvarado Gobernador Constitucional del Departam.to de las Californias asi lo mandó decreto y firmo de que doy fee.

Angeles Julio 11 de 1845

En sesion de este dia se aprobo por la Excma Asamblea la proposicion del dictamen que antecede, mandandose devuelva el expediente al Excmo Sor Gobernador para los fines que son convenientes

Pio Pico
Presid.

Agustin Olvera
Secrio

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PAGE 102

Office of the Surveyor General,

OF THE UNITED STATES, FOR CALIFORNIA.

I, **E. F. BEALE,** *Surveyor General of the United States for the State of California, and as such, having in my office, and in my charge and custody, a portion of the* **Archives** *of the former* **Spanish** *and* **Mexican** *Territory, or Department of* **Upper California,** *as also the papers of the late Board of Commissioners to ascertain and settle the private land claims in California; by virtue of the power vested in me by law,* **Do Hereby Certify,** *that the Seven preceding, and hereunto annexed pages, of tracing paper, numbered from one to Seven inclusive, exhibit a true, full, and correct copy of the petition of Pío Pico & Andres Pico to the Govr of California. The "Vista la peticion," & the approvals of the Assembly, As found in Expediente N 235 - entitled "Expediente promovido por los ciudadanos "Pio y Andres Pico en solicitud del pa-"rage conocido con el nombre de Santa Margarita "1841. 235" As the same appears among said Archives*

Keeper of Archives.

EXAMINED AND FOUND CORRECT.

In Testimony Whereof, *I have hereunto signed my name officially, and caused my Seal of Office to be affixed, at the City of San Francisco, this* 22d *day of* January *1862*

E. F. Beale, **U. S. Surveyor General, for California.**

No. 184

U. S. Dist. Court

The United States

vs.

Andres Pico

"Exhibit United States No. 1." for the U. S.

Filed March 31st 1862
W. H. Chevers,
Clerk

Pio Pico Gobernador Constitucional del Departamento de California.

La Excma. Asamblea Departamental en Sesion de hoy tubo á bien decretar lo siguiente: "Se aprueva la concecion hecha á favor de Don Andres Pico, de ~~[illegible]~~ sitios de ganado mayor en el rio de los "Moquelamos" que le fue concedido por el Superior Gobierno Departamental segun titulo librado con fecha seis de Junio del corriente año, de entera conformidad con la ley de 18 de Agosto de 1824 y Articulo 5.º del Reglamento Supremo de 21 de Noviembre de 1828." — Y para resguardo de la parte de Don Andres Pico lo hago así saber.

Dado en la Ciudad de los Angeles, capital del Departamento de California, en papel comun por falta de sellado, á los quince dias del mes de Junio de mil ochocientos cuarenta y seis.

Pio Pico

José Manuas Moreno
Srio. Pro t.º

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U. S. District Court

The United States

v

Andres Pico

Exhibit Hopkins No. 2
for United States.

Filed April 4. 1862,
W. H. Chevers,
Clerk

In the District Court of the United States

FOR THE NORTHERN DISTRICT OF CALIFORNIA.

The United States,

v.

Andres Pico

IN LAND CASES.

Dist. Court No. 184

Land Com. No. 357

BE IT REMEMBERED, that on this 22d day of March A. D., 1862, at the City of San Francisco, in the District aforesaid, before me, WM. H. CHEVERS, a Commissioner duly appointed by the Circuit Court of the United States for the Districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses, in civil causes depending in the Courts of the United States, pursuant to the Acts of Congress in that behalf, personally appeared R. C. Hopkins a witness produced in behalf of the United States in the above entitled cause, now pending in said Court under the Acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows: his ~~evidence being interpreted by a sworn interpreter.~~

PRESENT: U. S. Atty and P. Della Torre Esq & J. B. Williams for U. S., and Edward Stanly Esq for claimant

QUESTIONS IN BEHALF OF THE United States

Question 1st,

State your name, age, residence and occupation.

Ans.

R. C. Hopkins, lawful age, residence San Francisco; occupation Keeper of the

Spanish and Mexican archives in custody of the U. S. Surveyor General for California.

2nd

Look at the papers now shown you, marked Exhibits Hopkins No 1 and 2, and to be attached to this deposition, and state what they are.

Ans.

Exhibit No. 1 is a photographic copy of the grant produced by the claimant in this case. Exhibit No. 2 is a photographic copy of the certificate of approval by the Departmental assembly of said grant, also produced by the claimant. Both the originals of these exhibits are on file in the case among the papers of the late Board of Land Commissioners now in custody of the U. S. Surveyor General.

The signature of Governor Pio Pico as found in the archives is very uniform with the exception of the formation of the "P's." He appears to have had three several ways of forming the "P's" in his name. The

"P" in his signature to this grant and

"P" in his signature to this grant and to the certificate of approval resemble those which are found in his modern signatures, and ~~of~~ which I have found in only three instances, I believe, in the archives. One is the grant to Las Calaveras. the expediente of Las Calaveras. This expediente is not referred to in any original index in the archives. Another one is found in the unfinished expediente of José Maria Avila for San Miguelito, which is also not referred to in any original index in the archives. And this form of "P" is also found in the Naturalization paper of Manuel Torres, dated in November 1845. The expediente for Las Calaveras, Francisco Pico et al, is the only expediente found in the archives ~~for grants~~ of which ~~have~~ a corresponding grant has been presented to the Land Commission with this form of "P."

The grant to Andres Pico in this case has no corresponding expediente in the archives, and as a matter of course does not appear

in the Hartnell Index. It is however referred to in a communication from Narciso Botello dated 15th July to the Secretary of State, Moreno. There appears to be some difference in the handwriting of Botello, as found in the letter referred to, and his contemporaneous handwriting as found in the archives. Prior to the binding of the archives in 1888 they consisted of ~~were kept in~~ loose sheets and unbound books, which were preserved in tin boxes.

I do not remember that the Archives show that Micheltorena was ever north of Monterey during his term of office.

Signatures similar to that of Gov Pico on the papers produced in this case are found appended to his depositions taken before the Land Commission

The date of the certificate of approval produced in this case is ~~dated~~ June 15, 1846. The journal

of the Session of the Assembly

is ~~dated~~ June 15, 1846. The journal

of the Session of the Assembly held on this day shows no approval or mention of the grant, nor do the journals of any other session mention or note the approval of said grant. The journal of the session of June 15, 1846, is verified by Francisco Figueroa, President, and Narciso Botello Secretary.

Jose Matias Moreno is at present Governor & Political Chief of Lower California.

I think there is no doubt but that the signatures of Pico to the originals of Exhibits No 1 & 2 are his genuine signatures.

Subscribed & sworn to before me this 22d day of March A.D. 1862.

R. C. Hopkins.

W. H. Clement
N. A. Cora

No 184

UNITED STATES DISTRICT COURT

Northern District of California.

IN LAND CASES.

THE UNITED STATES

V.

Andres Pico

DEPOSITION OF

R. C. Hopkins

on part of United States.

Filed April 4, 1862,

W. H. Chevers,

Clerk.

Pío Pico Gobernador Constitucional del Departamento de California &

Por cuanto Don Andres Pico, mejicano de nacimiento ha pretendido para su beneficio personal y el de su familia el terreno conocido con el nombre de "Moquelamos" en estencion de once Sitios de Ganado mayor: practicadas préviamente las diligencias y averiguaciones consecuientes 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 las presentes letras, á reserba de la aprovacion de la Excma. Asamblea Departamental, y bajo las condiciones siguientes.

1.ª Será dueño en propiedad de once sitios de Ganado mayor en el rio de "Moquelamos" que linda al Norte con la orilla Sur de dicho Rio: al Oriente con la Sierra inmediata: al Sur con el terreno del Señor Galnak, y al Poniente con los baros de la playa

2.ª El terreno que se le adjudica, lo mantendrá libre de fianza, hipoteca ni otro gravamen alguno, ni enagenarlo en poder de manos muertas.

8

3ª Pedirá al Juez respectivo que le dé la posesion jurídica en virtud de este título, por el cual se le demarcarán los linderos, poniendo las mojoneras de estilo.

4ª Podrá cercarlo sin perjuicio de las travesías caminos y servidumbres; lo disfrutará libre y esclusivamente destinandolo al uso y aprovechamiento que mejor le convenga, pero no podrá enagenarlo antes de cuatro años de haber recibido la judicial posesion.

5ª Si contraviniere á estas condiciones perderá su derecho al terreno y será denunciable por otro que carezca de terreno y lo pretenda.

Por tanto, mando, que teniendose el presente título por firme y valedero, se tome razon de el en el libro á que corresponda, y se le entregue al interesado para su resguardo y demas fines.

Dado en la Ciudad de los Angeles Capital del Departamento de California en papel Comun por falta de sellado á los seis dias del mes de Junio del año de mil ochocientos cuarenta y seis.

Pio Pico

José Matías Moreno
Srio Por. D.

Queda tomada razon de este Superior despacho en el libro respectivo.

Moreno

69

9

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U. S. District Court

The United States

v.

Andres Pico

Exhibit Hopkins No. 1
for United States

Filed April 4. 1862.
W. H. Chevers,
Clerk

U. S
vs
Andreas Pico

No. 184. ND

May 20. 1862.

"Moquelemos."

184 ND
PAGE 115

The claim in this case was confirmed by this court but with much hesitation and grave suspicions as to its genuineness.

On appeal to the supreme Court that decree was reversed and the cause remanded for further evidence —

It is apparent from the opinion of the Court that the further evidence contemplated was either that derived from the archives or secondary evidence of those records of the kind which the Court has declared it will require. No such testimony has been the only additional evidence has been that of Pico Pico. But he merely testifies to the genuineness of his signature and that merely from the fact of seeing them on the documents & not from any recollection of having made the grant —

The only papers produced are the grants dated June 6. 1845 — and a certificate of approval by the Departmental Assembly dated June 15th 1845 —

Both of these are produced from the custody of the claimants There is also produced a communication signed Botello Deputy Secretary of the Assembly addressed to Moreno Secretary of state in which he informs the latter that the grant was with two others approved on the 15 July

With the exception of this communication the Archives contain no trace of the existence of this. There is no expediente — no petition or informes — no note of it in the corresponding book — no tornaboda of the title delivered to the party nor any allusion to the grant in any document or record whatever. The communication signed Botello is on a detached sheet of paper which ~~[illegible]~~ could readily have been placed among the numerous documents in the Surveyor General's office at any time previous to 1858 when they were collected and bound

8

up in books — In the case of Si
Manlow it was shown that the
introduction of a fraudulent expedi
tile into the archives was by no
means impracticable
But there are objections to this
document —
The handwriting cordually differs
from that of Botello contemporaneously
with its date —
2d — It conflicts with the certificate
of approval signed by Pio Pico
the states the approval to have
been given on the 15th June —
the other on the 15th July —
3d At the date given by Botello
the Journals of the assembly
show there was no session of
that body —
4 It ~~was~~ That this could not have
been a clerical error by which
July 15th was substituted for June 15th
is shown by the record of the
proceedings of June 15th signed
by Botello himself — ~~The minutes~~
~~after commencing an account of~~
~~the proceedings of~~
The Record shows that on the
15th June the assembly was
in session — That it transacted
various business — that no proceedings

5

with reference to this grant were had and that "there being no other business the Assembly adjourned" —

It thus appears that not only is there no archive evidence whatever of the existence of this grant but that those records afford positive proof that a part at least of the ~~proc~~ alleged proceedings with regard to it could not have been had —

Under the rulings of the Supreme Court this objection alone would be an insuperable obstacle to the confirmation of the claim.

U. S. vs Ingo 23 How. 543
U. S vs Castro 24 How. 345

There are other objections which are equally fatal —

The signatures of Pico are in his later style differing essentially from all the signatures (with 3 exceptions) ~~found in~~ which appear on the very numerous documents signed by him during his official career —

2 There seems to have been no possession or occupation of the land — nor any evidence that the existing of the grant was known or seen

2

6 pected until subsequently to
the American occupation —
3 Andres Reco had in connection
with his brother already obtained
a grant for 20 leagues —
Neither could therefor under
the colonization laws have re-
ceived a grant for more than
one additional league.
4 The grant was made if at all in June
about a month previous to the
capture of Monterey — It was
made without informes and
apparently without ~~pursuing~~ taking any
of the steps required by the coloni-
zation laws — It had never been
acted on, up to the conquest
of the country — nor so far as
appears had the land ever
been even visited by the grantee
supposing the grant to be genuine
It was evidently not made in
the just exercise of the Governor's
powers or with any idea of
carrying out the policy of the
colonization laws
In the language of the Supreme
Court "Besides the suspicious char-
" acter of the grant it appears to
" be wholly destitute of merit"
The claim must be rejected —

U. S. 184.

vs

Antonio Rico

Opinion

Filed May 20. 1862.

W. H. Chevers.
Clerk.

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 Fourth day of June in the year of our Lord one thousand eight hundred and sixty-two.

Present:

The Honorable OGDEN HOFFMAN, *District Judge.*

The United States
v.
Andres Pico
} No. 184

This cause having been remanded for further evidence as appears by the mandate of the Supreme Court of the United States filed June 12. 1861, and such further evidence having been duly taken, Now therefore, the said cause having been regularly brought to a hearing, counsel for the respective parties having been heard, and due deliberation had in the premises, It is Ordered, adjudged and decreed, that the claim of the said Andres Pico is not valid, that the said claim be and hereby is rejected, and that the petition of the said Claimant for a confirmation of his said claim be and the same hereby is denied.

Ogden Hoffman
Dist Judge

184

UNITED STATES DISTRICT COURT

Northern District of California.

The United States

v.

Andres Pico

Decree rejecting claim

Filed June 4th 1862

W. H. Chevers,

Clerk.

184 ND

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At a Stated Term of the DISTRICT COURT OF THE UNITED STATES OF AMERICA, for the Northern District of California, held at the Court Room in the CITY OF SAN FRANCISCO, on Wednesday the 15th day of October in the year of our Lord one thousand eight hundred and sixty-two.

Present:

The Honorable OGDEN HOFFMAN, *District Judge.*

The United States.
v.
Andres Pico.

No. 184.
"Mogelumnes."

And now at this day on application of J. B. Crockett, Esq. of Counsel for the Claimant it is ordered by the Court that an appeal in behalf of the Claimant herein, from the final decision of this Court rendered in said cause at the present 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 it is further ordered that the said Claimant give security for the costs of said appeal in the sum of two hundred dollars.

Ogden Hoffman
Dist Judge

No. 184

UNITED STATES DISTRICT COURT

Northern District of California.

The United States,

v.

Andres Pico.

Order granting appeal in behalf of claimant.

Filed October 15, 1862

W. H. Chevers,
Clerk.

District Court of the United States
Northern District of California.

The United States
vs. Appellee } D.C. 184: L.C. 357
Andres Pico, Appellant

Know all men by these presents that we E. C. Spalding and James Buckley of the State of California, are held and firmly bound to the above named United States in the sum of Two hundred (200) Dollars to be paid to the said Appellee, for the payment of which well and truly to be made, we bind ourselves, and each of us, our and each of our heirs executors and administrators, jointly and severally by these presents.

Sealed with our Seals and dated the 13th day of October A. D. 1862.

Whereas the above named Appellant has prosecuted an appeal to the Supreme Court of the United States at the City of Washington in the District of Columbia, to reverse the decree rendered in the above suit by the District Court of the United States for the Northern

District of California,

Now therefore the condition of this obligation is such that if the above named Appellants shall prosecute their appeal to effect and answer all damages and costs, if they fail to make their appeal good, then this obligation shall be void, otherwise to remain in full force and virtue.

Signed, Sealed, and delivered in presence of
W. A. Clevers.

Edw. C. Spalding
James Buckley

United States of America
Northern Dist. of California

E. C. Spalding and James Buckley parties to the above Bond being duly sworn do depose and say each for himself that he is worth the sum of Four hundred (400) Dollars over and above all his just debts and liabilities

Sworn to and subscribed October 15. 1862. before me.
W. A. Clevers,
N. P. Com.

Edw. C. Spalding
James Buckley

I hereby approve of the sufficiency of the foregoing bond.

San Francisco, Cal.
October 15, 1862.

Ogden Hoffman
U.S. Dist. Judge,
Nor. Dist. of Cal.

184.

U. S. District Court.

Andres Pico,

vs.

The United States.

Appeal Bond.

Filed Oct. 15. 1862,

W. H. Chevers,

Clerk

Sir Prefect of the 2nd District

Pio Pico and Andres Pico residents of the Municipality of San Diego, with due respect, and as best may be consistent with the law, appear before you saying: that the Government of this Department having granted us the lands which comprise the Rancho de Tomeculas, which belonged to the Mission of San Luis Rey, that we may repair thither with our Stock, which is of a sufficient quantity, we had the provisional possession of the grant in the month of October next ensuing. From this time until date and even when the juridical proceedings were going on, we have remarked that the Indians of that establishment oppose our stability in the mentioned location, alleging reasons which though void of sufficient merits to consider them, nevertheless make impressions on account of the risk in which from hence remain

our interests emanating from the aversion indicated. It seems that these same people would remain more resigned and in a degree satisfied with being left for their benefit the Rancho or land of Temecula, opening to them the treaty by which to make a barter of those for those of Santa Margarita, compromising ourselves to indemnify them for the improvements which consist in a vineyard in a middling state, the value of which being estimated by appraisers, We shall pay immediately with black cattle or beasts of burthen as best may suit the establishment and running appraisements.

This proposition which may be made to them in proper terms, putting them in mind of the good results which thereby must fall to them, will calm the spirit of uneasiness which is perceived amongst them by the loss of Temecula. — And our persons families and interests will be secured in a way more lasting and beneficent on both sides. The Superintendant of San Luis Rey will give his report with his customary impartiality and we have no doubt that therein he

will make obvious that in Santa Margarita, there is no other stock than that of ours and that there will not result any incumbrance to the establishment by this contract.

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These circumstances and that of having been in provisional possession of the little location of San Onofre since the month of March 1836, as will be verified by the documents which are duly accompanying under the numeral bordering upon that of Santa Margarita, in which place part of our cattle has been maintained until this date - has induced us to petition the Excellent Governor, through the medium of the prefecture to be pleased to grant us permission to put in executive the proposed exchange including consequently the respective sketch which at the same time will be deposited of the land of San Onofre, under the restrictions and other circumstances, that to his Excellency shall appear convenient as well as obliging us to receive the payment for the Vineyard in a sum as large as shall be demanded of us, and in the terms indicated.

On account of the foregoing we

ask and pray you to be pleased to cause the corresponding proceedings to be taken upon this our solicitation and report upon it as you shall think just for which favor we shall remain obliged to you.

August February 22nd 1841.
(Signed) Pio Pico. Andres Pico.

Monterey 10th of May 1841.

Having seen the petition with which this expediente commences, the report of the prefecture of the 2d. District, the valuation made on the landed property existing on the location of Santa Margarita, the will explicitly manifested by the natives of San Luis Rey, with what else presented itself and was to the purpose, in conformity with the laws and regulations on the subject, Messrs Pio and Andres Pico are hereby declared owners in their own right, of the locations known by the name of San Onofre, and Santa Margarita, Bordering to the North on the point called El Ballecita and la Tenaja, to the West on the point of San Mateo, to the South on the boundaries

of the Pueblo de las Flores, and el Morro, and to the east on the land of the cajon, according to what is shewn in the sketch annexed to this expediente, and under the conditions that the interested parties satisfy the establishment of San Luis Rey for the sum of 3300 Dollars, for the landed property which was valued in San Margarita, subject to the approbation of the Excellent Departmental Assembly, and to the conditions which this shall stipulate. Let the corresponding document be issued and entered in the respective Book for due attestation. Don Juan B. Alvarado Constitutional Governor of the Department of both Californias thus did order, decree and sign of which I give testimony.

Angeles July 11th 1845.

In this day session the Excellent Assembly approved of the proposition in the foregoing opinion ordering that the expediente be transmitted to the Excellent Governor for the purposes that may be convenient.

(Signed) Pio Pico
President

Augustin Olvera
Secretary.

San Francisco, Apr 4, 1862

It is hereby stipulated and agreed that the foregoing is a correct translation of Exhibit U.S. No. 1 filed by the U.S. March 31, 1862, and that this translation may be filed in the cause as of that day.

Edwd Stanley.

Atty for claimants

No 184.

U. S. District Court.

The United States
v.
Andres Rico

Translation of Exhibit No 1 filed by the U. S. and Stipulation.

Filed Nov: 4. 1862.
W. H. Chevers,
Clerk

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 Andres Pico, appellant, and the United States, appellee, wherein the decree of the said District Court was in the following words, viz:

"It is ordered, adjudged, and decreed, that the claim of the said Andres Pico is not valid; that the said claim be, and hereby is, rejected, and that the petition of the said claimant for a confirmation of his said claim be, and the same hereby is, denied."

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 four 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. 15 Feb.

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 Salmon P. Chase Chief Justice of said Supreme Court, the first Monday of December in the year of our Lord one thousand eight hundred and sixty four.

COSTS OF

Clerk..... $

Attorney... $

$

~~Issued by~~ L. W. Middleton

Clerk of the Supreme Court of the United States.

No. 119 December Term, 1864.

MANDATE

SUPREME COURT UNITED STATES.

Dec 28, U. States.

Filed Aug 23 1865

Geo. W. Harris Clk

By Chas. F. Sullivan

Deputy

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UNITED STATES OF AMERICA.

~~CIRCUIT~~ District COURT OF THE UNITED STATES,

~~Ninth Circuit~~, District of California.

The United States
vs
Andres Pico

Clerk's Office,

No. 184

Praecipe.

To the Clerk of said Court,

Sir:

Please ~~give~~ prepare for the use of, and at the expense of the United States, the certified copies of the following papers in the above entitled cause now on file in your office.

1 ff Notice of appeal filed May 9. 1855.
1 ff " " " " 17 "
4 ff Petition for Review " June 11. "
2 ff Answer of United States " April 28 1856
4 ff Petition for Review " " " "
3 ff Decree of confirmation (from vault) " " 24 1857
1 ff Order granting appeal (minutes) " Sept 4. "
4 ff " to file Mandate (") " June 12 1861

No. 184

U. S. ~~Circuit~~ Court,

~~Ninth Circuit,~~ District of California.

The U. States

vs

Andres Pico

PRAECIPE

FOR certified copies of certain papers in above cause

Filed October 1885

Lorbard Hoffman
Clerk.

By R D Grimwood
Deputy Clerk.

30 folios

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6 Brandeis from county) filed June 12. 1861

2 Plaintiff's claim } " " " " 1862

3 Order granting appeal } " Oct 15. "

to claimant }

4 Plaintiff's notice of appeal from county, Aug 23. 1865.

Per Prescott Jeffers
U.S. District Attorney
Louis Bates Assistant
States attorney

U. S. District Court.

The United States
v
Andres Pico.
} No. 184

San Francisco, Mch 31. 1862

Edwd Stanly Esq,
Atty for claimant,

Sir,

Please take notice that on Thursday next, the 3d day of April 1862, at 11 o'clk a. m. or as soon thereafter as counsel can be heard, I will move the Court to fix a time in which the proofs shall be closed and the cause heard.

Yours &c.

Jno H. Shark
U. S. Atty

U. S. District Court

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The United States

vs

Andreas Pico

Notice to fix a time to close proofs.

Service of a copy of the within is admitted March 31, 1863.

Edw Stanly

W H Sharp
U.S. Atty

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Court No 184. Land Cases No 357

Index.

Andres Pico
vs
The United States. } "Moquelumne"

Page of Transcript.

No 184.
In District Court of the
United States for the
Southern District of California

Andres Pico
vs
The United States

"Mogueloma"

Index.

Stanley Hoing
Atty

U. S
vs
Andres Pico

Remittitur from Supreme Court
Case reported 22d How. p. 406
Grant dated June 6. 1846
Documents introduced are first
a grant —
Approval of Dep. As. 15 June 1846
Both produced by Claimant
Letter of Narciso Botello July 15. 1846
In which he says he incloses
3 approvals of which this one.

The only testimony before land
Commission was N. C. Dew proves
signatures — Rejected
In district Court C. M. Weber
first ~~saw~~ knew the rancho in 1848
Murphy swears to the same
fact. —
Archives show grant to Pio &
Andres Rico of Sta Margarita
for 20 leagues.
Affidavit of Andres Pico before
Land Commission.
Shows that he had already

2

received 20 leagues —

We object

1. No trace of grant in archives

11. J vs Sueo
" Castro
" Knights Exr

2 Not noted in Simmo's or Jones or Hartnell's indices

So

3 No approval by Dep. Assembly records show it was not ~~given~~ given

4. Signatures unlike those in Archives — There are three similar

5 ~~expedientes~~ signatures in Archives —

But the three are of doubtful authenticity —

The expedientes are not numbered and they purport to be complete expedientes

5 Archis Reco long before the date of this grant received 10 leagues in colonization —

Hartnell's case

184

U.S. v. Andres Pico

Notes of Argument

U. S.
vs
Andres Pico

1874

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The claim in this case is founded on a grant made by Gov: Pio Pico ~~May~~ June 6. 1846 and which was approved by the Departmental Assembly June 15th of the same year. The genuineness of the grant and of the certificate of approval is testified to by V. A. Sen. No attempt has been made to contradict or impeach him — nor is any doubt suggested as to ~~its~~ the authenticity of the papers. A document is also produced from the Archives purporting to be a communication from the Secretary of the Assembly transmitting the title papers to the Secretary del Despacho with the approval of the Assembly.

The claim was rejected by the Board for want of proof of occupation & cultivation

Additional testimony has been taken in this Court from which it appears that in 1848 the grantee had some ~~cattle~~ horses upon ~~it~~ the land and took possession of some improvements made upon it by C. M. Weber.

This evidence is of course wholly insufficient to show a fulfilment of the conditions But if the grant and other papers be regarded as genuine (and under the evidence we are compelled so to consider them) the grantee obtained a full and complete title from the former government the failure to perform conditions subsequent tho' it might have exposed him to a denouncement of the land did not until such a proceeding was ~~forfeited~~ had forfeit ~~his~~ it — And his vested title remained unimpaired up to the change of sovereignty

But now if in the case of a complete title we were authorised to declare the land forfeited where the grantee had so unreasonably delayed the performance of the conditions as to justify the presumption that he had abandoned his land this case would not fall within the principle — The grant was issued about ~~less than~~ a month before the American flag was raised in this country — the disorder and ~~confusion~~ incidental to the invasion of the country would naturally prevent any settlement in remote parts — and it seems unreasonable to say that any failure to perform conditions of a grant issued but a few months before the Mexican authority was finally subverted, justify the inference "that the grantee "had abandoned his land

"during the existence of the
"former government and
"now seeking to resume it
"from its enhanced value"

U. S. v. Fremont. 17 How.

The land granted is described as 4 square leagues bounding on the river Moquelemos bounding on the North upon the southern shore of said river on the East upon the adjacent ridge of mountains on the South upon the land of Mr Gulnac and on the West by the estuaries of the shore" —

There would seem to be no difficulty in identifying this tract.

This case was submitted many months ago without argument or observation of any kind on either side —

It was rejected by the Board for non fulfillment of the conditions

But If the grant be really genuine the non performance cannot under all the circumstances divest the title which the claimant

acquired by the grant of the Governor approved by the Departmental Assembly —
No expediente containing the usual documents, (petition informes orden of concession deseño copy of the grant &c) has been produced no deseño or map of the land has been exhibited — the only paper found in the archives is the communication of Botello transmitting the titles with the approval of the Departmental Assembly to the Secretary del Despacho before adluded to —
The production however of the original title authenticated by the testimony of an unimpeached and uncontradicted witness leaves us no alternative but to regard it as genuine and if the grant was duly made and approved, the title to the land passed to the grantee.
To any one acquainted with the facility and unscrupulousness with which in this day of frauds have been perpetrated, and sustained by testi-

many apparently conclusive, ~~the~~ it ~~only~~ a grant unsupported either by evidence from the archives, or by proof of occupation of the land must appear suspicious. But even in such cases the Court is not at liberty in the face of the uncontradicted testimony of unimpeached witnesses to substitute its own suspicions for ~~the~~ proofs. ~~in~~ In the case ~~at~~ now Bar, however a document is found in the archives which affords the best if not the only moral evidence of the genuineness of the grant.

Under the proofs in this case we do not feel warranted in pronouncing the title to be spurious and rejecting the claim.

A decree of confirmation must therefore be entered.

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The U. S.
vs No. 184.
Andres Pico

Opinion

April 24. 1857.

(8)

F 1

In the District Court of the United States

FOR THE NORTHERN DISTRICT OF CALIFORNIA.

The United States,

v.

Andreas Pico

IN LAND CASES.

Dist. Court No. 184

Land Com. No. 357

To Edward Stanley Esq

You are hereby notified that the testimony of

R. C. Hopkins

in the above entitled cause in behalf of the

United States

will be taken before me, the undersigned, a Commissioner duly appointed by the Circuit Court of the United States for the Districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses, in civil causes depending in the Courts of the United States, pursuant to the Acts of Congress in that behalf, commencing on Wednesday the 26th day of Feby. A. D. 1862, at 11 o'clock A.M., and continuing from day to day until finished, at my office No. 17, U. S. Court Rooms; and you are hereby further notified to then and there appear and propound such questions to the said witness as you deem fit.

Witness my hand and official seal at the City of San Francisco, in said District, this 18th day of February A. D. 1862.

W. H. Chevers

U. S. COMMISSIONER.

San Francisco
Feby. 18th 1862

Due service of a copy of the within is hereby acknowledged.

E W Smith

1884