

CASE NO.

196

NORTHERN DISTRICT

LAND AT THE MISSION OF
SANTA CLARA GRANT

JOSE DE ARNAZ

CLAIMANT

LAND CASE 196 ND PAGES 55

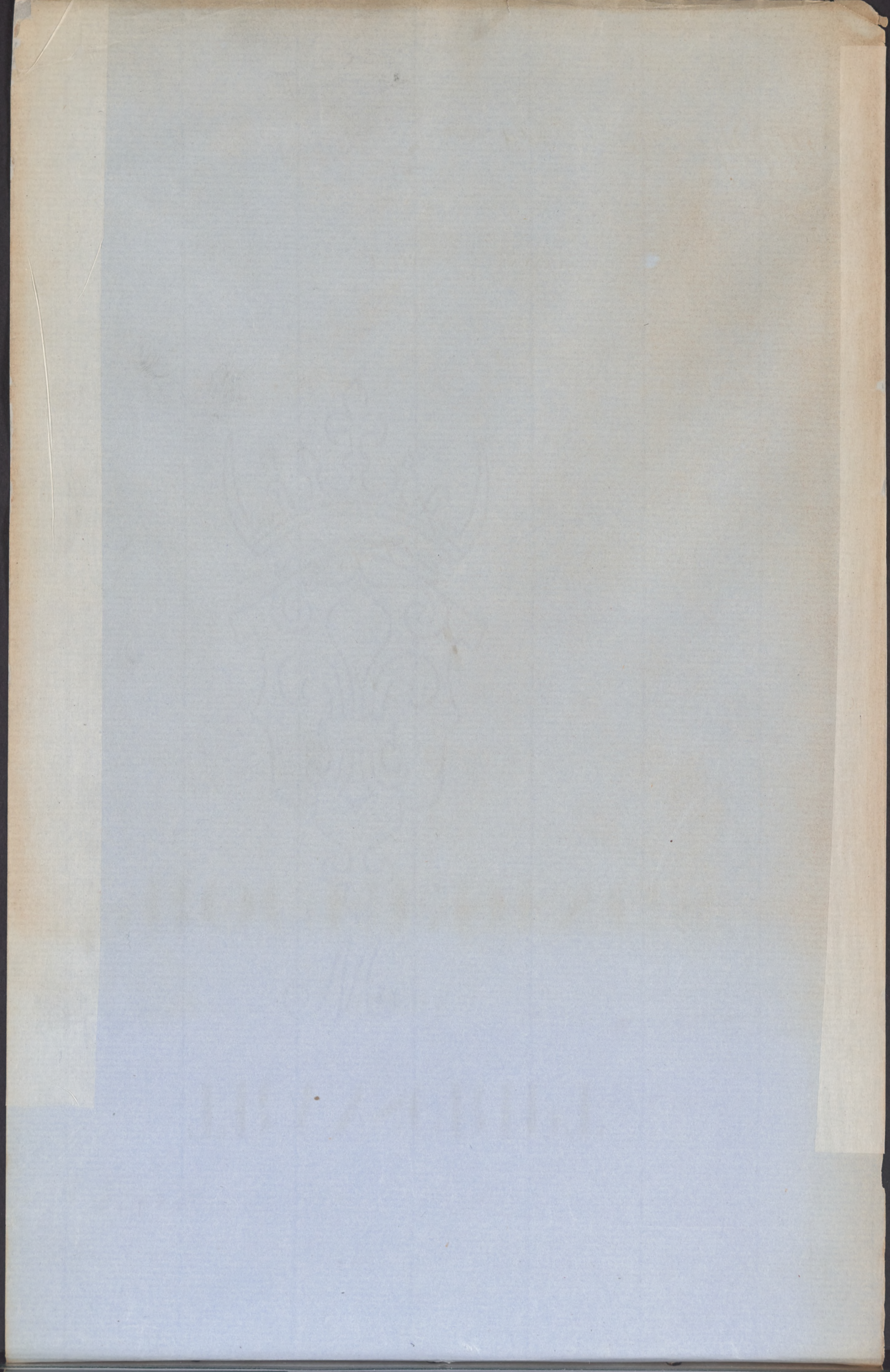
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TRANSCRIPT

OF THE

PROCEEDINGS

IN CASE

NO. 687.

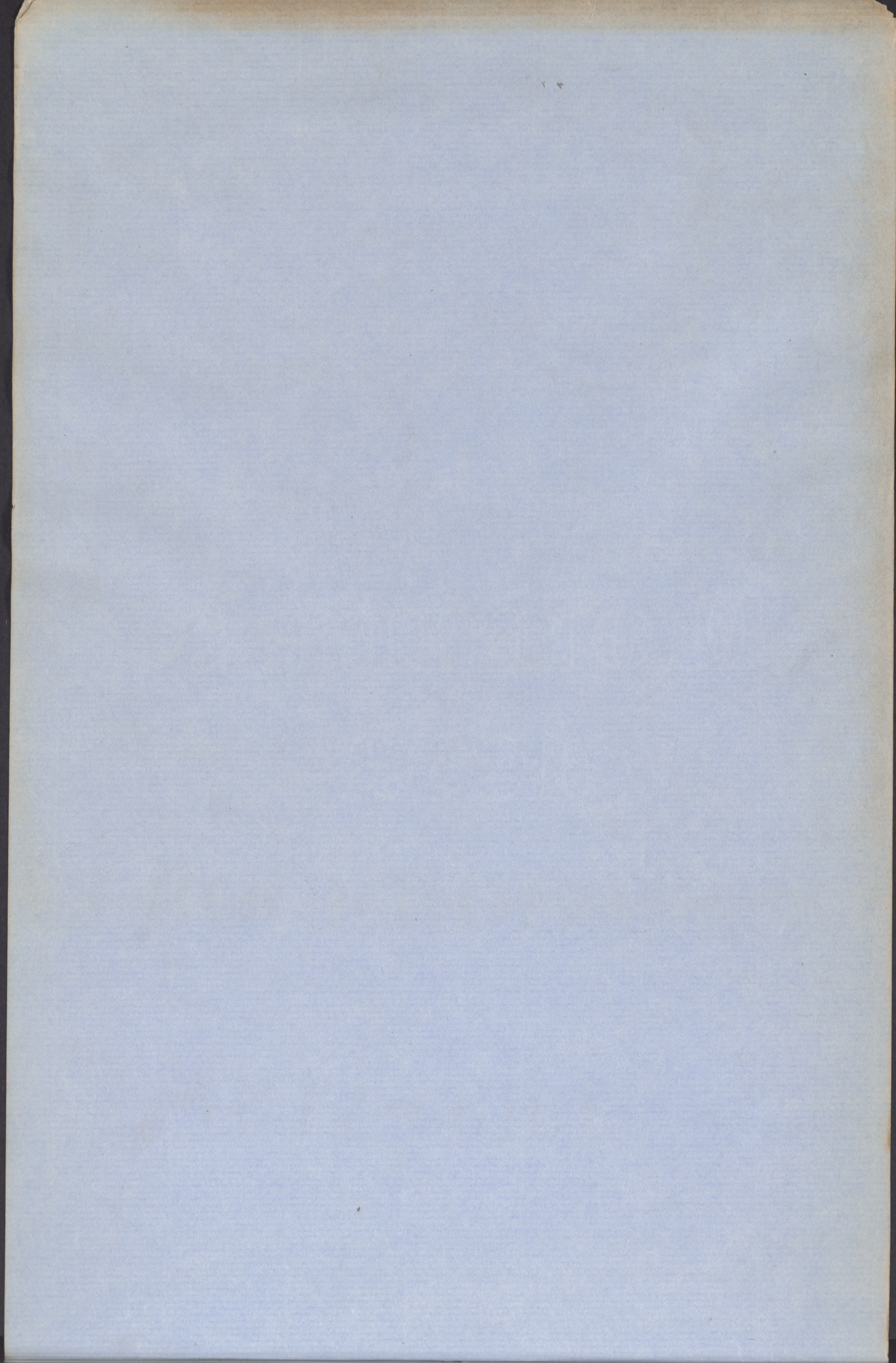
José de Arnaiz CLAIMANT

VS.

THE UNITED STATES, DEFENDANT,

FOR ~~THE PLACE NAMED~~

"Land at the Mission of Santa Clara."



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 second day of March, Anno Domini One Thousand Eight Hundred and Fifty-three, 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;

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The Petition of José de Arnáz,
for the Place named
Land at the Mission of Santa Clara,
was presented, and ordered to be filed and docketed with No. 687, 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 July 6, 1853.
In Case No. 687, José de Arnáz for five sitios of land at Santa Clara, the Deposition of J. J. Warner, a witness in behalf of the Claimant, taken before Commissioner Alpheus Felch with document marked "A" annexed thereto, was filed:

(Vide page 4 of this Transcript.)

San Francisco, October 6, 1854
In the same Case the deposition of José Castro, a witness in behalf of the Claimant, taken before Commissioner Peter Gott, was filed:

(Vide page 5 of this Transcript.)

San Francisco October 21, 1854.
In the same Case, the Counsel for the Claimant filed the following Certificate of the Surveyor General, to wit:
(Vide page 15 of this Transcript.)

2
San Francisco January 2, 1855.
Case No. 687 was ordered to be placed at the foot
of the 4th Clap Cases on the Trial Docket.

San Francisco Jan'y. 16, 1855.
Case No. 687 was submitted under the Rule of
March 21st 1854.

San Francisco April 24, 1855.
In the same Case, Commissioner S. B. Farwell de-
livered the Opinion of the Board, rejecting the claim:
(Vide page 19 of this Transcript.)
And the following Order was made, to wit:
(Vide Page 22 of this Transcript.)

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Petition

To the Honorable Board of Commissioners for ascertaining and settling Private Land Claims in the State of California

Your Petitioner Don Jose de Armas resident of Santa Barbara County California respectfully represents to Your Honorable Board that he claims certain tract of land containing five sitos altillo more or less which is claimed between the heirs of Juan Don Jose Hernandez y Gracia Alvarado son of Don Juan y Maria Mission lands of Santa Clara Mission California.

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That he claims the same upon the basis of a sale and assignment of conscience made to him in consideration of money of his furnished and paid to the Mexican Government as is shown by the instrument of conscience hereto filed executed in favor of your petitioner by Don Jose Castro Lieutenant Colonel of the Mexican Army and Commandant General of the Department of the California's principal authorities of the Supreme Government of the Nation to alienate said houses and whatever exists belonging to the Nation and to this Department in particular with the end of administering to the resources which may serve to the common defense given at Los Angeles the 1st of August 1846

Your Petitioner has no other of the lands which he claims but refers your honors to the original title for a more full and ample description of the same and will proceed to take such further testimony as may be required by the Board

Your Petitioner prays your Honorable Board to take into consideration his claims to the said five sitos altillo more or less to declare

his right and title to the said and to
confirm the same

Henry Hancock
attorney for claimant

Filed in office March 2nd 1853

Signs

Geo Fisher
Secy

Recorded in Vol 2 of Petitions on pages
76 and 77

Signs

Geo Fisher
Secy

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Depo of
J. J. Warner

San Francisco July 6th 1853

On this day before Commissioner Alphonse
Fitch came J. J. Warner a witness for
- and in behalf of Jose de Armas claimant
ant in case number 687 and was duly
sworn his evidence being given in the
English Language

The U.S. Associate

Law Agent was present

In answer to Questions

by counsel for the claimant the witness
- testified as follows

Question by Mr Hancock
- what is your name

Answer My name is
J. J. Warner my age about fifty five
and I reside at San Diego in the County
of San Diego and State of California

2 Question

Look over

the paper here presented purporting to
be a grant of land at Santa Clara
made by General Jose Castro to Jose
de Armas on the 1st August 1846
marked Exhibit A and filed in case
No 687 in the office of the Secretary of
the Board of Commissioners in the
private Land claims in California

5-

and say whether you recognize the sig-
nature of Jose Castro as the said
summit

answ'r I have examined
the paper and believe the signature there
to be ^{the} summit signature of said Castro
J. J. Warner
U.S. Marshal San Francisco &
not present

Subscribed and sworn to
before me at San Francisco this 10th
day of July A.D. 1853

Alphonse Filoh
Commissioner

Filed in Office July 10th 1853

Geo Fisher

Recorded in Evidence B. Vol 3 p 15

Signed

Geo Fisher

Secy

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Depo of
J. Castro

United States of America }
State of California }
San Francisco October 5, 1854
This day came before me J. J. Warner
U.S. Marshal Sustaining to the
said deponent Board of United
States Land Commissioners in
said State Jose Castro as witness on
behalf of the claimant Jose de
Arcas in Case No 1087 of the Board
of said Board and said witness being
sworn deposed in Spanish which is in-
terpreted by the interpreter to said Board
as follows

The United States Law
agent is present
Iusticia by Mr Packard
who appears for claimant attorney
Iusticia what is your
name again and residence
answ'r My name is
Jose Castro my age 46 years my residence

in mounting California

2 Questioned how you hold any office civil or military under the Mexican Government in the year 1846 if you what office

answering General of the Mexican Troops in California

3 Questioned what the document mentioned to you mentions at L. substituted to this department and whether belief in this case and state whether your name should appear in your General signature

answering Yes this is my General signature written by me at the date of this document and for the purpose mentioned herein

4 Questioned in what manner were you authorized by the Supreme Government to dispose of public lands

answering

A special decree of the Minister of war of the Supreme Government made about May or the 1st of June 1846 and received by me at Monterey in June or July of that year authorized me to see disposal of any lands or property belonging to the Mexican Government in California for the purpose of defraying the war expenses and waging war against the United States of America

5 Questioned what became of the decree which you received

answering

Had it with my other papers and a page of mine on our way going from Los Angeles to the state of Sonora. Had our way of going to affairs and soldiers we found no water and the men became insensible and fell some of them

7

from this house the mules became scattered and lost and with them my papers which I never recovered that decree was among them

Trusteed state as far as you can the contents of said decree

Answer

It was a brief order. It was a circular which was issued to all the Commanders in Chief as well as to my self. It was signed by the Minister of War and bore the initials that I do not remember whether it was signed by Foran or Alvarado.

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Various official communications from both of them the latter succeeded the former in the War Department, but whichever of them signed this decree I cannot recollect. It was in the usual form of orders and decrees from the War Department and fully authorized me to act in disposing of the lands and property of the Government by sale or other wise for sustaining the war.

Trusteed

State if you recollect the transactions to which the said decree relates and whether you received any part of the consideration money for which said deed was given if you know much did you receive at that time when the deed bears date

Answer

I remember making the sale of which this deed is the receipt and that before the time of making the said deed received all the consideration money named in the deed and the receipt in said deed of my company in consideration of money before said and said de presente is a memorandum in comparison,

Received no money then it had all been paid before the deed was executed
Cross examined by United States Law Agent
Trustee

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In which hands writing is the body of the document of which you have spoken and submitted to your the deposition

Answer I do not know
2 Trustee whom did you just see it

Answer at the time when signed it August 1st 1846

3 Trustee who presented it to you for execution

Answer Jose de Armas the instructed party in the deed

4 Trustee where was it presented to you and who was present
Answer

It was at my General Head Quarters in Los Angeles there might have been some persons present, there were officers and soldiers there most of the time. I cannot remember at that particular time who was present there was no doubt some persons present

5 Trustee (name some of them whose present

Answer I cannot now name them.

6 Trustee (naming after the paper was presented to you was it that person's name it

Answer I do not remember it may have been an amount of five minutes or some thing of that kind

7 Trustee (naming before you signed the paper did you know said Armas desired the Law)

answer

Head, directed him to make selection of such property as he wished and I did not know that he had selected that land till the day was brought to me to be signed.

8. Question was that papers signed before draft of the decree of the War Department spoken of herein before.

Answer It was signed about two weeks before that the Decree.

9. Question who gave you the decree or name of the War Department.

Answer It was brought by a courier regular from that office. I do not remember the person who brought it.

10. Question To whom was it addressed?

Answer It was addressed to General Don Jose Castro.

11. Question How do you know it was a circular?

Answer It was a special decree to myself and by letter from the Minister which accompanied the document I was instructed of the objects of the decree. The paper itself showed that it was a circular. The word circular was written on the document.

12. Question Was the circular and letter on one sheet of paper and under one envelope?

Answer They were on different papers. I cannot remember whether they were under the same envelope.

13. Question In which was contained the papers of the Minister?

Answer It was in the

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special decree printing the circular
conforms to the same powers as the
other Commanding

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14 Question: Who are
the other Generals to whom said cir-
- cular was sent

Answer: I do not
recollect

15 Question: Did you
ever know

Answer: I do not recollect
it was directed to the Generals of Lower
California, California and New
Mexico

16 Question: Was it
- directed to the Generals of these Depart-
- ments by their names

Answer: It was directed
to the Commanding Generals not by
their names, the circular printing
was not directed to me by name

17 Question: How did
you happen to receive a circular and
letter at the same time of the same
import

Answer: It came from
the War office and was not remark-
- able that they might have sent more

18 Question: State the
difference between the direction of the
letter and the circular

Answer: The letter
commenced "My esteemed and
- distinguished friend" and was ad-
- dressed to me. The circular was an-
- addressed to the Commanding Gen-
- erals of the Departments as I before
- stated

19 Question: How did
the letter proceed after the address

Answer: The letter after
the address commenced about this
way "Finally what you apprehended
in 1839 or 1840 is likely to occur" &c

11

I cannot picture now to recollect all the letter there was a great deal more I cannot remember the words. The letter united to and individually expressed its regret that the country was about to be lost and lamented the want of provisions &c.

The letter was dated in May or June and signed either by Trull or Abner not officially and it came when the circular came and was also accompanied by the special decree and other decrees.

20 Justice Hall the contents of said special decree answer

It states that it gave me authority to sell and dispose of all the Government property in California as near as I can recollect it was about in this form "From the circumstances which have occurred and the relations existing between Mexico and the United States it seems that war was inevitable.

The most Excellent President orders me to say to you that you may dispose of all the property belonging to the General Government in the Department of California and all such as is so recognized and that the Comandante General shall apply it and its proceeds to the support of the war."

The decree contained more and but substantially it was about as I have stated. It related to no other subject. It was dated in May or June 1846 and signed as I have before stated by Trull or Abner.

21 Justice Hall the contents of the General circular of which you have spoken approve the special decree

28 Quintero What business was arising the granted engaged in at that time

Answer He was a merchant in Los Angeles

29 Quintero Did he petition in writing for the land in Quintero

Answer He did not

30 Quintero Was there any record of the sale made by your persons in the archives

Answer He did not say he was given to the interested party I think there was no record placed in the archives

31 Quintero Did you not know that the laws of the mission could not be sold at that time

Answer I think that they could be sold that the authority to sell them

32 Quintero Who collected and disbursed the funds of California in 1846

Answer Alvarado and Pablo de la Guerra I think were the collectors of customs that year I am not certain

33 Quintero Did said arising under his account for payment to him or to any other person

Answer He did not

34 Quintero Did you purchase he did not

Answer Because in June of that year he had all the affairs he closed and all persons to follow me in charge of the country

35 Quintero were not Alvarado and de La Guerra government officers at that time and as such had they not charge

of the public funds

answer

Alvarado

was a Government affair and Alvarado was Chief Treasurer they had no funds of the Government for them were none

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36 Question

was

they not the proper officers with whom to settle the public accounts

answer

During

times of peace they would have been so but under the circumstances in time of war the military chief had every thing at his disposal

Alvarado

was in the military service under me, and de la Guerra went home to attend to his private affairs

37 Question

Who audited

the account of Alvarado and approved it

answer

myself and

at my General Quarters in Los Angeles for or three days before the execution of the deed

38 Question what

became of his papers

answer They were

all lost with my other papers

Jose Castro

submitted and came to before me within 5th day of October 1854

Pete 248 led in commission etc

Filed in Office October 1854

signed

Geo Foster

Seal

Records in Ex B. Volume 3 page 421

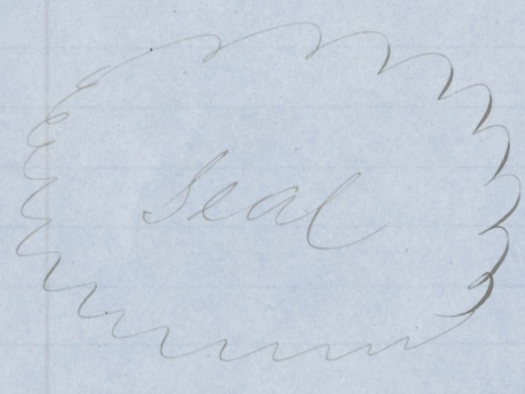
Geo Foster Seal

Certificate
of the
Surveyor
General

Office of the Surveyor General of the
United States

I John C. Hoops 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
do hereby certify that upon the re-
quest of Henry Hancock I have caused
a diligent search to be made in
the said Archives and found no docu-
ment of the date of April 1st or
prior of the year 1846 directed to
Commissioner General Jose Castro
authorizing him to sell lands in
California in view to meet the ex-
penses of defending the country in
the war of 1846

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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 20th
day of October A.D. 1854

John C. Hoops
U.S. for General
California

Filed in Office October 21st 1854
Signed

Geo Fisher
Secy

Received in journal vol 4 page 79
Signed
Geo Fisher
Secy

14

17
José Castro Comandante Coronel de Ejército
y Comandante General del Departamento
de las Californias.

Exhibe el Autógráfico presentado por el
Supremo Gobierno Nacional para la enajene-
ción de los terrenos que pertenecen a la Estación y a este Depar-
tamento en particular con el fin de proporcionar recursos que puedan servir a la
defensa común en el caso de una invasión
extranjera cual la presente. En atención
a que Don José de Arce ha pedido a esta
Comandancia en documento de las Canti-
dades que en diversas épocas le ha facili-
tado y la que recibe de presente en total
de tres mil quinientos pesos le conceda
los terrenos baldíos que tiene la Misión de
Santa Clara en la parte que mira al Po-
blado y considerando cuanto hay que ver
en virtud de las facultades que me
son conferidas por el Gobierno Supremo en
nombre de este y de la Estación Mexica-
na he venido en hacer Venta Real y
Efectiva enajenación perpetua para siempre
jamás al Excmo. señor Don José de
Arce del referido terreno que consta de
cinco sitios poco mas o menos que se enuen-
tra entre los linderos de los Señores José Hen-
nandez, Ignacio Alvarado, José Peña y la Es-
presada Misión a cinco varas fuera del
Corral que esta a su espalda teniendo
en esta dirección la Alameda por linderos
hasta la primera vuelta que esta forma
camino de la Misión al pueblo de S^{ta}
José de toda lo cual se hace Venta pura
perpetua e inalienable con libre franquicia
y general Administración de todo lo que
hay en si en tierra monte, Aguas y c.

En consecuencia decla-
ro por las presentes letras ser dueño legítimo
del citado terreno el Sr. arriba mencionado
dentro de los terminos que de pospuesto.

18

y sin otra condicion y en tal virtud podan
tomar posesion de el desde esta fecha.
Y para la debida constancia en todo tiem
po doy este documento como formal es-
critura que sera reconocida y catada
por todas las autoridades civiles y milita
res de la Nacion y por el Gobierno General
de ella autorizado deudamente con mi
firma en este papel como por absoluta
falta del sellado.

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Quartel General de los Angeles

Agosto 12 de 1826.

Jose Castro

Filed in Office March 2nd

1853.

Geo. Fisher Deery

Translation
of Title

Jose de la Cruz Lieutenant Colonel of the Army
and Commanding General of the Department
of the Californias

Previously authorized by
the Supreme National Government for
the alienation of the lands houses and
whatsoever exists belonging to the nation
and of the Department no particular
with the view of administering to the
resources for the common defense in
the case of an invasion by strangers as
is at present.

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In consideration of that which
Don Jose de Arana has asked of this Com-
mandant in payment of the debts sums
which amount to a total of some fifteen
and that which he owes amount to all
three thousand five hundred dollars
(\$3500),

Have conceded taking the vacant
lands which the Mission Santa Clara
has in the part which looks to the
east here and considering the quan-
tity that there may be there in virtue
of the faculties that are contained in
one of the Supreme Government in the
name of the Mexican Nation have
come to make real sales effective and
irrevocable alienation from the
said Don Jose de Arana of
the lands to land which contains
five acres of the most fertile and
which is met with between the lands
of San Jose de Arana and San Jose
at five reales without the corral which
exists at the back part of it.

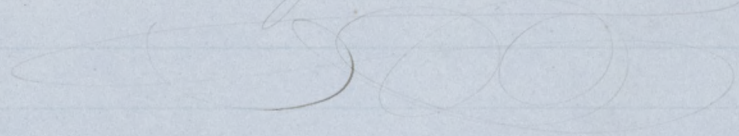
Having in
this direction the demand for the land
up to the first town which the road
of the Mission forms to the Pueblo of
San Jose all of which has been purely
lawfully and irrevocably sold with
free frank and legal administration
of all whatsoever in ground timber waters &

In consequence I declare by these present letters that the above named Mary Lee the legitimate master of the land in the terms which are expressed and with out other conditions and in virtue of such may take possession of it from this date,

and for all constancy in all times I give this document as a formal writing (Instrument) which may be shown and acted upon by all of the authorities civil and military of the nation and by the General Government of which it is duly authorized by my sign at the end on common paper for the absolute want of seals)

San Antonio General of Los Angeles
August 14th 1846

Jose Castro



Filed in Office March 2nd 1853

Signat

Gen Fisher
Secy

21

Opinion
of the
Board

Number 687
Jose de Armas
of
The United States

}
} For a cant lands
} of the Mission of Santa
} Clara

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This claim is based upon a copy of a grant
said to have been issued by Jose de Armas on
the 14th day of August in the year 1846 and
is void of proof of the existence of the original
and if it had been issued as alleged in
the petition it could have been of no
validity.

Inasmuch as the power of the
public functionaries of Mexico in California
now has ceased by the time and has
been transferred by conquest to that of the
American Government.

It is deemed this claim
invalid and advice will be returned
accordingly.

Rejected
Filed in Office April 24th, 1855

Respectfully
Geo. Fisher
Secretary

Recorded in Record of Decisions Volume
2 page 635

Respectfully
Geo. Fisher
Secretary

Deere

Number 687
Jose de Armas
of
The United States

}
} In this case on
} hearing the proofs and Allegations it is
} adjudged by the Commission that the

Alumni of the said Petitioner is invalid
and it is therefore decreed that his application
from said petition is void and null and void
R. Aug. Thompson

S. B. Farnell
Commissioner

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Filed in Office June 24th 1853

Signed
Geo. Fisher
Secretary

Records in Record of Decisions Volume
page 636

Signed
Geo. Fisher
Secretary

And it appearing to the satisfaction of
the Board that the land hereby assigned
agent is situated in the Northern
District of California it is hereby

Ordered

that two transcripts of the proceedings
and of the decision in this case and
of the papers and evidence upon which
the same are founded be made and
any copies by the Secretary and of
which transcripts shall be filed with
the Clerk of the United States District
Court for the Northern District of Cal-
ifornia and the other documents
to the Attorney General of the United
States

Office of the Board of Commissioners,

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

I, *George Fisher* —

Secretary to

the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, do hereby certify the foregoing *Twenty two* — pages, numbered from 1 to *22*, 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. *687* on the Docket of the said Board, wherein

José de Arnaiz —

the Claimant against the United States, for the place known by the name of "Land at the Mission of Santa Clara,"

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

Geo. Fisher
Geo. Fisher

Geo. Fisher

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196 (M)

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

No. 196- ~~196~~

THE UNITED STATES,

vs.

Jose de Amaz.

TRANSCRIPT OF THE RECORD

FROM THE
BOARD OF U. S. LAND COMMISSIONERS,

In Case No. *687.*

Filed, *October, 23^d* 185*7*

J. A. Monroe,
Clk.

To the Clerk of the United States
District Court for the Northern District
of California, in the matter of

José de Armas

vs

United States of America

} Case 187

Notice is hereby given
of an appeal from the decision
of the Board of Commissioners
to ascertain and settle private Land
Claims in the State of California, in
the above entitled cause

Hancock & Packard
attorneys for
Claimant

San Francisco May 10 / 1855

~~Case 687~~
José de Arias
vs
United States
of
America

Notice of Appeal

No 196

Filed May 10th 53
L. M. Morrison
clerk

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

José de Anas
vs
The United States } Case 196.

Your petitioner appearing as attorney
of José de Anas of the County of Santa Barbara
respectfully shows by the Transcript of the
proceedings of the Board of Land Commissioners
to ascertain and settle private Land Claims
in the State of California in Case 687 on the
docket of said Board and hereby appended to
and made a part of this petition, that hereofore viz
on the 2nd day of March 1853 the said José de Anas
filed his petition with said Board availing his
right to 5 Leagues of Land situate in the County
of Santa Clara the same being in the Northern
District of California and for a more particular
description reference is hereby made to said petition, and
that on the 24 day of April 1853 the said Board
rejected said Claim as invalid; that on the 10th day
of April your petitioner in conformity with Law
filed in this Honorable Court a notice of his
intention to prosecute an appeal from said decision
and that on the 23 day of Oct 1853 a

Manuscript of the proceedings in said cause
before said Board of Land Commissioners was
filed in this Honourable Court,

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Your petitioner prays that the decision
of said Board may be reversed and that
this Honourable Court, decree that the title
of said José de Amas be good and valid for
said Land. And your petitioner will ever pray &c

A A Packard
Attorney for Claimant

2

No 196

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

José de Armas

vs

The United States

Petition of Claimant.

Filed December 20, 1855,

J. Cheever
Deputy.

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

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The United States
Appellee
vs
Jose de Anas

No. 196

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

A. Glassell
Asst. U.S. Atty.

No. 196 B

U.S. Dist. Court

The U. States

vs
José de Armas

Answer

Filed Dec: 10. 1855.

J. Chivers,
Deputy.

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A. Massell

At a stated term of the District Court of the United States for the Northern District of California held at the Court House in the City of San Francisco on Monday the 11th day of ^{February} January 1856.

Jose de Armas
appellant
vs
the United States
appellee
No 196

This cause coming on to be heard at the above stated term on appeal from the final decision of the Commissioners to ascertain and settle private Land Claims in the State of California under the act of Congress approved March 3 1851 upon the Transcript of the proceedings and decision and the papers and evidence on which said decision was founded, and also the arguments of counsel for the Claimant and for the United States being heard = It is ordered adjudged and decreed, that the decision of the said Commissioners be affirmed and that the said claim be held invalid and rejected

Order Hoffman
U. S. District Judge

No 196

U. S. Dist. Court,

The United States,

— acts —

Insi de Armas

Decree,

Filed Febry 11. 1856,

Cherous,
Deputy.

United States District Court for the Northern
District of California

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Jon de Armas }
vs } Case 196
the United States }

The Claimant intends to appeal from
the decision of the United States District
Court in the above entitled Cause, to
the Supreme Court of the United States

to John C Monroe
Clerk, etc

A Packard atty
for Claimant

Case 196²

U. S. Dist. Court,

Pose de Armas

vs

the United States

Notice of Appeal

Filed May 15, 1856,

Charles
Deputy.

United States district Court for the Northern
District of California.

196 ND

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Jose de Armas
vs
the United States

} Case 196

And on this day comes the Claimant by
his Attorney and moves the Court that
an appeal be granted in the above entitled
Cause, from the judgment of this Honorable
Court to the Supreme Court of the
United States

Case 196³

U. S. Dist. Court,

Jose de Armas

vs

the United States

Motion

to appeal

Filed May 15, 1886,

Clarend,

Deputy.

196 ND

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At a stated term of the United States District Court for the Northern District of California held at the Court House in the City of San Francisco on the 16th day of May one thousand eight hundred and fifty six

Present the Hon Cyden Hoffman Jr District Judge

Jose de Armas appellant } Case
vs } 196
the United States appellee }

The motion of appeal made and filed in the above named cause having been heard by the Court it is ordered that an appeal in said cause be granted on filing security in the sum of two hundred and fifty dollars to be approved of by the Judge

Case 196⁴

U. S. Dist. Court.

José de Arnás

v3

the United States

Order granting

Appeal

Filed May 16, 1886.

Chever, Deputy.

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

196 ND

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Jose de Armas appellant
vs
the United States } Case 196

Know all men by these presents, that we Henry P Irving and E L Sullivan of the City and County of San Francisco State of California are held and firmly bound unto the above named United States in the sum of two hundred and fifty dollars to be paid to the said appellee, for the payment of which well and truly to be made, we bind ourselves our heirs executors and administrators jointly and severally by these presents sealed with our seals and dated the nineteenth day of May one thousand eight hundred and fifty six, 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 entitled Cause, 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 Claimant shall prosecute his appeal, to effect and answer all damages and costs if he fail to make his appeal good then this obligation shall be void otherwise to remain in full force and virtue

Witness our hands and seals the day
and year above written

Henry P Irving



E L Sullivan



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Henry P Irving being sworn says that he is
a resident of the City of San Francisco and
State of California and that he is worth the
sum of two hundred and fifty dollars after
the payment of all his debts and liabilities
and exclusion of property exempt from
execution

Henry P Irving

Sworn to before me
this 20th day of May 1856

J. A. Monroe
U. S. Commissioner

E L Sullivan being sworn says that he is a
resident of the City of San Francisco and
State of California and that he is worth the
sum of two hundred ^{and fifty} dollars after the
payment of all his debts and liabilities and
exclusion of property exempt from exe-
cution

E L Sullivan

Sworn to before me
this 19th day of May 1856

Henry P Irving

J. A. Monroe

U. S. Commissioner

Approved,
May 20, 1856,

Edwin Hoffman
U. S. Dist Judge

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U. S. District Court

Case 196 5-

Jose de Armas

vs

the United States

Bond on Appeal

Filed May 20. 1886.

Charles

Deputy.

NORTHERN DISTRICT OF CALIFORNIA.

UNITED STATES DISTRICT COURT.

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Josi de Armas.

vs.

The United States.

Sand Case, No 196,

CLERK'S FEES.

1855

May 10	Filed Notice of Appeal,	\$	11	20
	" Transcript		"	20
	" Petition, & Answer,		"	40
	" Mutual Decree of Confirmation,	1	10	
	" Notice of Appeal,		"	20
	" Motion to Appeal,		"	20
	" Mutual order granting appeal,	1	10	
	" & " " fixing amt of Appeal Bond	1	10	
	" Appeal Bond & 2 Acknowledgments,	1	20	
	" Costs,		"	20
	Judgment record 80 fol at 30 cts		24	00
	Appeal Record 80 fol at 20 cts		16	00
	Certificate & Seal,		"	70
	Dockets &c,		6	00
		\$	<u>46</u>	<u>60</u>
		\$	<u>52</u>	<u>60</u>

TAXED AT 50 DOLLARS.

60
Fifty Two 100

John A. Moore, CLERK.
J. W. H. Cheves,
Deputy.

United States District Court
Northern District of California.

196
Jose de Armas,

vs.

The United States,

Clerk's Fees, \$ *52.60*

Filed *May 21. 1936.*

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PAGE

CLERK'S FEES

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Jose de Amas

196 ND

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PAGE

The United States

Appellant - Medea's claim upon an alleged grant made by Jose Castro on the first day of August 1844. This claim was rejected by the Commissioners upon two grounds. 1. The insufficiency of the testimony to establish the existence of a grant. 2. That is such were not the fact and the grant was established, it was made at a time when this country was in the military possession of the United States, and there was no right to grant subsisting in Castro at that time. This Court considers ~~either~~ of these grounds as sufficient to sustain the opinion of the Commissioners. A decree therefore affirming their decision against the validity of this claim must therefore be entered.

196 4

U. S.

11

Fire the Army

the use of money
decision of Court -
apt claim

José de Arnas
vs
United States of America } Case 196

This claim is based on a sale made by José Castro, Military Commandant of the Department of California, to the claimant, on the first day of August 1846, of Five Leagues of the land of the Ex Mission of Santa Clara, in consideration of the sum of \$3,500.

The facts are not contested by the Government.

The questions which arise are:

- 1st The Authority of the Military Commandant to dispose of the National Domain.
- 2nd Is the title or sale protected by the Treaty of Guadalupe Hidalgo?

The authority of the Executive to order or authorize the sale of Public Lands is contained in the Law of April 4th 1837, for translation of which see Rockwell page 627. That the Executive conferred on the Commandant General ample authority is proved by the deposition of José Castro.

Is the Grant protected by the Treaty?

The Treaty ipso facto confirms the grant. No fact is clearer than that a treaty of peace ends the war. It is the most solemn act of the Government, becoming the Supreme Law of the

land and thereby placed beyond the lawful reach of Legislative Acts.

In *6 Peters*, 738 the Supreme Court says.

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"A treaty of cession is a deed of the ceded territory: the Sovereign is the grantor; the act is his, so far as relates to the cession. The treaty is his act and deed, and all Courts must so consider it, and deeds are construed in equity by the rules of Law. A government is never presumed to grant the same land twice."

"Neither Government had any rights to renounce, over the lands to which a title had been conveyed to their citizens or subjects respectively.

The United States did not come into Court claiming this cession and renunciation as vesting them with the whole Territory in full dominion." *6 Peters* 736.

"A cession of territory is never understood to be a cession of property belonging to its inhabitants.

The King cedes only that which belongs to him. Lands that he had previously granted were not his to cede; neither party could so understand the cession." *U. S. v. Percheman* 7 *Peters*, 87.

"A grant of land in possession of the Indians was good to pass the rights of the Crown; it severed them from the Royal Domain, so that they became private property which was not ceded to the U. S. by the Treaty with Spain." *U. S. v. Fernandez*, 10 *Peters* 303.

The Court in construing the Treaty as a deed should be governed by the clearly expressed and manifest intention of the Grantor and our title rests on the force and effect given to the Treaty.

Had this country not been ceded to the

by Mexico to the United States who would or could have controverted this grant.

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In applying the provisions of the treaty to private rights the Court should vindicate the honor and good faith of our government by giving its most equitable construction in favor of the party whom it stipulates to protect, for it must be considered that it is not by the voluntary act of Arnaz that he becomes the subject of the United States; it is not by his election that his title is brought into controversy by a peremptory Legislative act. In equity the Government is bound to assume the position of Mexico as the guardian of the rights of Arnaz, who does not voluntarily throw off his allegiance to his Government, but is bartered off by his nation to obtain peace for the rest of his countrymen.

Nations have no judge, but every just Government respects the rights of its citizens.

The general maxims laid down by Vattel in Chap. 17 in the Interpretation of Treaties says:
"It is necessary to establish rules of interpretation founded on reason and authorized by the law of Nature, capable of diffusing light over what is obscure, of determining what is uncertain and frustrating the attempt of a contracting power void of good faith." "It is not allowable to interpret what has no need of interpretation; if he who can and ought to have explained himself has not done it, it is to his own damage. Neither of the contracting powers has a right to interpret the treaty at his pleasure. The interpretation of every act and of every treaty ought to be made according to certain rules proper to determine the sense of them, such

as the parties concerned must naturally have understood when the act was prepared and accepted. And further "that as good faith ought to preside in conventions they are always interpreted on the supposition that it actually did preside in them.

The honor and good faith of our Government in the observance of the treaty will be tested in its application to this class of property.

The Land Commission held that all titles of a date subsequent to the 7th of July 1846 emanated after the conquest of the country by the forces of the U. S. and were not protected by the laws of nations or the treaty of Guadalupe Hidalgo, and that said conquest took effect on the 7th of July 1846, by the raising of the American Flag at Monterey. The mere fact of the raising the American Flag in one town or two towns, neither of which was the seat of Government, was not sufficient to constitute a conquest of the whole territory. The facts of the state of the country, about the time of the issuing of this Grant, are that on the 11th of August 1846 the American forces under Commodore Stockton took possession of the City of Los Angeles, the seat of Government, but were unable to retain it, and until the arrival of General Kearney with land forces, in January 1847 the American Occupation was confined to the two ports of Monterey and San Francisco which were under the guns of their ships. See Reports of Gen. Kearney and Com. Stockton pages 514 and 515 of documents accompanying the Annual Message of the President to the 30th Congress.

These facts are noticed in the decision of the

Supreme Court in the Mariposa Case, Lemont
vs The United States. They say " Col. Lemont entered
California at the head of an American Force in 1846,
and the country was entirely subdued, and under the
military government of the United States in the beginning
of 1847, and continued to be so held until it was
finally ceded to the United States under the treaty of
Guadalupe Hidalgo."

The only grounds that the Commission has
for declaring that all grants made after the 7th July
1846 were void seem to be that, Congress declared
War on the 13th May 1846 and that, in the 14th
section of the Act of March 1851, creating the Commission,
Congress ceded a presumption in favor of towns which
had an existence on the 7th July 1846, but nothing
can be inferred or construed in the words of that section
as affecting the validity of this grant. The fact
that the 10th Article of the original Treaty of Guadalupe
Hidalgo, which would have rendered inoperative this
grant, was stricken out in the Senate, proves that,
the declaration of the Commission in relation to grants
made after the 7th July 1846 has no proper foundation.

In conclusion, it seems to me that, the
Commissioners transcended their authority in departing
from the expressed intention of the act which gave
them existence and defined and governed their action,
and that their decision in this case ought to be
reversed.

A Packard atty
for Claimant

In the District Court
of the United States for California

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Jose de Armas
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U. S. Dist Court -
Case No. 196.

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In reply to the Brief filed in this case on the part of the claimant it is considered sufficient to say - that -

The questions which arise in this case have long since been settled against the the claimants proposition -

It is admitted that the grant was made subsequent to the 6th of July 1846: and without referring to the fact that it was made by a person who never had any power to make grants at any time, the court is referred to the case of U. S. v. Forment, where it is expressly decided that all acts whatever of Mexican officers - tending to vest or perfect titles to lands in California - after the 6th day of July 1846 - (were) would have been utterly null and void.

A. Stassell -
Assistant Atty. of U. S.

4/19/96.

U. S. Dist. Court

Juan de Armas

v.

The U. States

Ans. to plffs Brief

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Al. Russell

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Office of the Board of Commissioners,

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

San Francisco, Oct. 15th 1855.

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

Sir;

I herewith transmit you, pursuant to the requirements of the Act of Congress, approved August 31st, 1852, a Transcript of the Record of the Proceedings and of the Decision of this Board, of the Documentary Evidence and of the Testimony of the witnesses upon which the same is founded, in Case No. 687 on the Docket of the said Board, wherein

José de Arnaiz is

the Claimant against the United States, for the place known by the name of "Sands at the Mission of Santa Lolara" and request your receipt for the same.

I am, Respectfully,

Your Obedt Servant,

Geo. Fisher