

CASE NO.

221

NORTHERN DISTRICT

LOS HUECOS GRANT

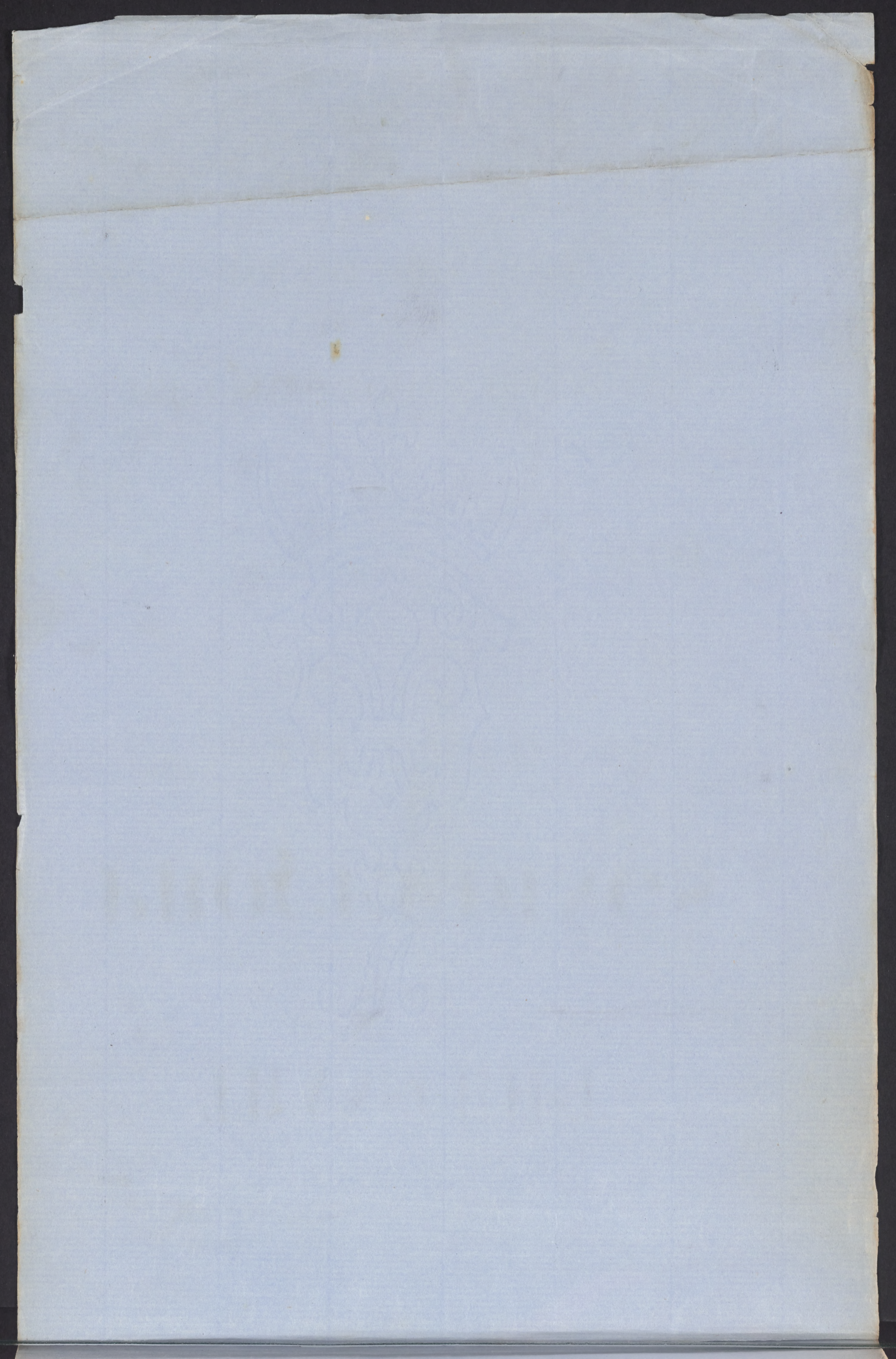
JOHN ROLAND, ET AL.

CLAIMANT

LAND CASE 221 ND. 119 PAGES

NOV 7 1962

282



TRANSCRIPT

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PAGE 1

OF THE

PROCEEDINGS

IN CASE

NO. 282.

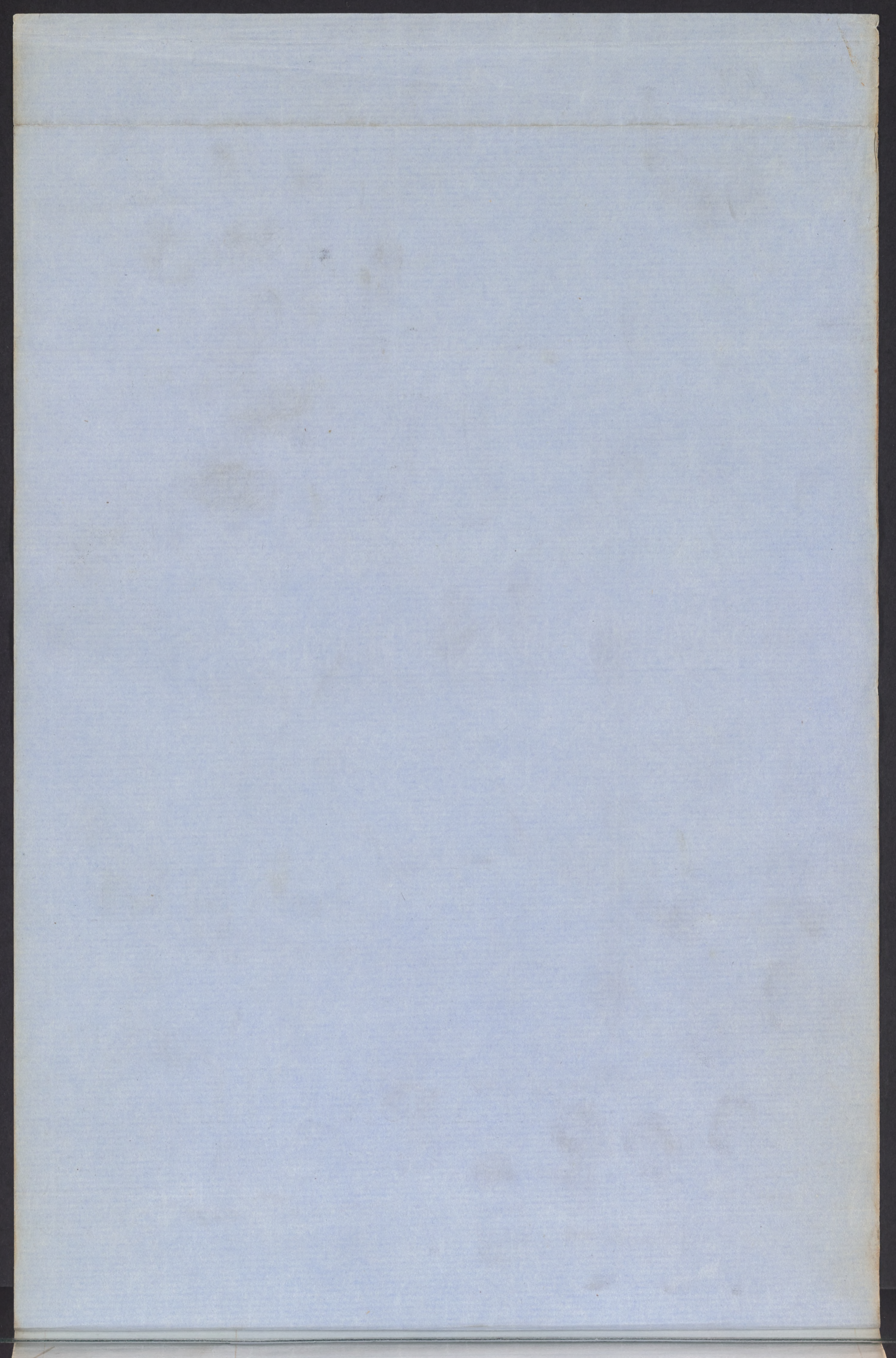
John Roland, et al. CLAIMANT &

VS.

THE UNITED STATES, DEFENDANT,

FOR THE PLACE NAMED

"*Los Hornos*"



Office of the Board of Commissioners,

To ascertain and settle the Private Land Claims

IN THE STATE OF CALIFORNIA.

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

The Petition of John Roland et al',
for the Place named
"Los Muecos,"
was presented, and ordered to be filed and docketed with No. 282 and is as follows, to wit;

(Vide page 3 of this Transcript.)

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

Los Angeles October 18th 1852.

In case no. 282, John Roland and J. L. Hornsby for the place named "Los Muecos," the deposition of Ignace del Valle, a witness in behalf of the Claimants, taken before Commissioner Melvin Hall, with document marked H. H. M., and a translation thereof marked "m", annexed thereto, was filed;

(Vide page 4 of this Transcript.)

San Francisco Sept. 21' 1853.

Case no. 282 Called; on motion of the Counsel for the claimants, ordered to the foot of the Docket.

San Francisco Sept. 12' 1854.

Case no. 282, on motion of the Counsel for the claimants with the consent of the U. S. Law Agent, was ordered to the foot of the 2^o Class Case, on the Trial Docket.

2
San Francisco October 23rd 1854,
In the same case the Counsel for the Claimants
filed the following Stipulation, to wit:
(Vide page 2 3 of this Transcript.)

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San Francisco October 24th 1854,
Case no. 282 was submitted on briefs and taken
under advisement by the Board.

San Francisco Oct. 28th 1854,
In the same case the Counsel for the Claimants
filed the following Stipulation, to wit:
(Vide page 2 3 of this Transcript.)

San Francisco November 21st 1854,
In the same case Commissioner R. Aug. Thompson
delivered the Opinion of the Board rejecting the
claim:

(Vide page 6 7 of this Transcript.)
and the following order was made, to wit:
(Vide page 6 9 of this Transcript.)

3 Petition

To the Commissions appointed to ascertain and settle Private Land Claims in the State of California

John Roland and J. L. Hornsby pursuant and pray the confirmation of their title to a tract of land containing nine leagues lying in the county of Santa Clara known and described as los huecos o sobrantes de terrenos que resultan en el paraje de las Animas y el Rancho de Pala pertenecientes a los señores Don Carlos Melvar y Jose de Jesus Bernal abasando las tierras del censo colorado hacia las caidas del Valle y the vacant or surplus lands which remain in the place called las Animas and in the Rancho de Pala belonging to Charles Weber and Jose de Jesus Bernal including the lands of the said mountain towards the Valley

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Which was granted on the 16th day of May 1846 by the then Governor of California under authority of the Laws and Regulations then in force to Louis Annas and the Petitioner John Roland jointly an undivided interest of Luis Annas which was sold and conveyed by him to J. M. Jones by deed dated the 22nd of October 1850 and by said J. M. Jones who is now deceased, devised to the Petitioner J. L. Hornsby by last will and testament bearing date the 4th of September 1851 each of the two Petitioners now claiming an equal undivided interest to the land that they have of no other claim in support of their claim they refer to the copy of the Expediente certified by the General Journal of the United States for the State of California marked A the Translation thereof marked B. the Copy of the Grant marked C and and Translation thereof marked D all of which are herewith filed and to such other evidence as they may hereafter present

A. S. Whittenden

Attorney for Claimants

Filed in Office July 6th 1852

George Fisher Secretary

Recorded Record of Petitions Vol 1st Page 100

George Fisher Secy

Deposition of Ygnacio del Valle

Office of the United States Land Commission
Los Angeles October 18th 1852.
On this 18th day of October 1852 before me at said
Hall one of the Commissioners for ascertaining
and settling Private Land Claims in
California personally appeared Ygnacio del
Valle a citizen of said State and of John Ireland
and J. H. Hensley Claimants in the case which
is Number 282 in the Docket of the said Com-
missioners who having been duly sworn testified
as follows

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The Associate Law Agent was notified and attended
Question First What is your name and age
and where do you reside

Answer My name is Ygnacio del Valle I am
forty four years of age and reside in Los Ang-
eles California

Question Second are you acquainted with
the signatures of Pio Pico and Jose Antonio Mun-
oz

Answer I am
Question Third Examine the documents marked
Exhibit B being the original Grant instrument
upon and which is filed as part of your Deposition
and say

Whether or not the signatures of said
persons to the Grant and that of Munoz to the cer-
tificate which follows it are genuine

Answer I have examined the documents referred
to the said signatures are genuine

Question Fourth Who was Governor of Califor-
nia on the 10th of May 1846 who was acting
at Los Angeles at that time as Secretary
Answer Pio Pico was Governor and Jose Antonio
Munoz was acting as Secretary

Ygnacio del Valle
Sworn and Subscribed

Before me
John Ireland
Commissioner

Filed in Office October 18th 1852
George Foster Secy.
Recorded in Evidence B. Volume 2 Page 94
George Foster Secretary

5-

1846.

L. S. De la

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Los huecos o sobrantes del terreno que resultan
en el parage de las Animas y Rancho de
Pala concedidos a Luis Arenas y Juan Boland.

nº 587.

6

25da { Gobierno del Departamento
de California.

S. Sor. Gobernador.

Angeles. Mayo 5º de 1846.

Luis Arenas y Juan Roland
Vecinos de este Departamento

Estiendose el decreto de concecion ante V.E. con el debido
y librese el titulo a los interesados respecto manifiestan que
para su resguardo. teniendo ambos algunos
bienes de campo unico
Pico.

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gino de que subsisten sus
familias y careciendo de terrenos en que poner las para
su conservacion y fomento ocurran a la bondad de
V.E. impliendole se origine concederles los huecos que
resulten en los parages de las animas y Cañada de
Pala, pertenecientes a Don Carlos Mirar y Jose de Jesus
Sbernal en la Jurisdiccion del pueblo de San Jose
Guadalupe, abrazando las tierras del cerro Colorado
hacia las cañadas del Valle, en la misma jurisdiccion
hasta el completo de nueve sitios que consideran sufi-
cientes para el fin indicado cuyo diseño ofrecen
presentar a V.E. oportunamente. Por tanto S. V. E.

35da y ordenan se origine tener en consideracion lo espuesto
y mandar se les estienda el titulo correspondiente
de cuya gracia lo vivan siempre reconocido. Sivi-
endose admitir esto en papel comun por falta de
sellado.

Angeles Mayo. 5 de 1846.

Luis Arenas.

John Roland.

Angeles. Mayo 6 de 1846.

Vista la Solicitud con que da principio este
Expediente con todo lo demas que se tubo presente
y ver convido, usando de las facultades con que me
hullo autorizado por el Supremo Gobierno a nombre
de la Nacion Mexicana he venido por las presentes
letras en declarar a los Señores D^o Luis Arenas
y D^o Juan Roland, dueños en propiedad de los
terrenos sobranes que hay en el terreno de las Animas
y rancho de Pala, hasta el numero de nueve sitios
de ganado mayor con el concepto de que estos sitios
de ganado Mayor estan fuera de las medidas del
Señor Don Carlos Mirar y D^o Jose de Jesus Sbernal.

45da libreseles en consecuencia el titulo que les asegure su
propiedad y reservese el expediente para someterlo
a la aprobacion de la Junta. Asamblea Departamtl.

Pico Pico Gobernador Constitucional del Departamento
de California, asi lo mando, decreto y firmo. Doy fe.
Pico Pico. - Jose Matthias Mooreno. La Int^o

Pío Pico Gobernador constitucional del Departamento de las Californias.

Por cuanto los Señores D. Luis Arenas y D. Juan Molano, han solicitado para su beneficio personal y el de sus familias los huecos o sobrantes de terreno que resultan en el paraje de los Animas y el Rancho de Paula en la jurisdicción del Pueblo de San José Guadalupe pertenecientes a los Señores Don Carlos Wixar y D. José de Jesús Bernal abarcando las tierras del Cerro Colorado hacia las Caídas del Valle, hasta el completo de nueve litos, practicadas previamente las averiguaciones que han sido hechas con todo lo demás que se tuvo presente y verificado he venido por decreto de este día en uso de las facultades con que me hallo autorizado por el Supremo Gobierno a nombre de la Nación Mexicana declarar como declaro a los Señores expresados dueños en propiedad de los huecos o terreno sobrante en los ranchos antes dichos y las tierras del Cerro Colorado hacia las Caídas del Valle con arreglo a la ley de 18 de Agosto de 1824 y reglamento de 21 de Noviembre de 1828. a reserva de la aprobación de la Junta.

6504. Asamblea Departamental y bajo las condiciones siguientes.

1.^o Podrán crearlo sin perjudicar las traversías caminos y servidumbres: lo disfrutaran libre y exclusivamente destinando lo al uso que mejor les convenga.

2.^o Solicitara del juez respectivo los de la posesión jurídica en virtud de este decreto por el cual se demarcaran los límites con las respectivas vecindades.

3.^o El terreno de que se hace donación es puramente de nueve litos de ganado mayor y esta ubicado en los sobrantes o huecos que hay en los ranchos de los Señores Don Carlos Wixar y D. José de Jesús Bernal, abarcando las tierras de el Cerro Colorado hacia las caídas del Valle. El juez que le de posesión lo hará medir con arreglo a ordenanza a vista del oficio que presentaran los interesados. En consecuencia cuando que teniendo el presente título por firme y valioso se tome razón de el en el Libro respectivo y se entregue a los interesados para su resguardo y de sus fines. Dado en la Ciudad de las Angeles en papel Común por no haber de sellado a seis de Mayo de mil ochocientos Cuarenta y seis.

7. 104.

Pío Pico. J. M.^o Moreno.

Mrs. Jut.^o

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

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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 Mexican Territory or Department of Upper Calif^a
do hereby certify that the Seven preceding and her-
eto annexed pages of tracing paper numbered
from one to seven inclusive and each of which is
verified by my initials (S. D. K.) exhibit true and accurate
copies of certain documents on file and forming part
of the said archives in this office.

In testimony whereof I have hereto
signed my name officially and affixed my private
Seal (not having a Seal of office) at the City of San-
Francisco Calif^a this 16th day of June 1852.

Samuel D King.
Surveyor G. Calif^a

Filed in office. July 6th 1852.

Geo. Fisher.

Seery.

9 B
Translation
of
Espediente

To His Excellency the Governor

Gov of the
Dept of the
California

Louis Armas and John Roland
residents of this Department res-
pectfully represent to your Excellency that they
both during some cattle or which their families
subsist and accounting land in which to put
them for their subsistence and support look
to the goodness of your Excellency praying that
you will grant them the vacant lands which
remain at the Rancho called Las Armas and
Cañada de Pala belonging to Don Carlos Ber-
nardo y de Jesus Bernal with the jurisdic-
tion of the Pueblo of San Jose Guadalupe inclu-
ding the lands of the rancho towards the
amount of the valley in the same jurisdiction
to make up fully the extent of nine leagues
which they consider sufficient for the pur-
pose intended to,

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A map of a such land they
offer to present to your Excellency at a con-
venient time wherefore they pray your Excel-
lency to take this into consideration and to order
that the proper title be issued to them for which
they will always remain grateful
They ask that this be received in common
paper in front of sealed

Agueda May 3th 1846
Louis Armas John Roland
Agueda May 5th 1846

Let the decree of concession be issued and the
title be delivered to the parties interested for
their protection
Fico

Agueda May 6th 1846
In view of the Petition with which this Expedi-
ente begins and in the exercise of the powers
with which I am invested by the Supreme
Government in the name of the Mexican Nation
I do by these presents declare Louis Armas and
John Roland owners of the surplus lands of the
Rancho de las Armas and Pala to the number
of nine leagues of the larger size with the un-
derstanding that these leagues lie within the
measurements of the lands of Carlos Berber and
Jose de Jesus Bernal though the title be issued

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which will serve to them the property and let
the Expediente be retained to be submitted for
approval to the Departmental Assembly Pío
Pico Constitutional Governor of the Department
of the Californias thus read and signed

Pío Pico

José Matías Moreno Lic. Ycto
Pío Pico Constitutional Governor of the Depart-
ment of the Californias Don Luis Cuevas
and Don Juan Boland have solicited for them
personal benefit and that of their families
the vacant or surplus lands which which remain
in the place called Casamunus and in
the Rancho de Pala in the jurisdiction of the
Puerto of San José de Guadalupe belonging
to Don Carlos Weber and Don José de Jesús Ben-
nal including the lands of the Cerr Colorado
(red hill) towards the descent of the valley with
the full quantity of nine leagues

The necessary
steps having been taken and in pursuance
thereof and of this day in the exercise of the
powers with which I am invested by the Sup-
reme Government in the name of the Mexican
Nation do I do and do declare the said por-
tions owners in full property of the vacant or
surplus lands of the said Ranchos and the
lands of the Cerr Colorado towards the descent
of the valley in conformity with the Law of the
18th of August 1824 and the Regulation of the
3rd of November 1828 subject to the approval
of the Departmental Assembly and under
the following conditions

- 1 They may enclose it without injuring the
paths roads and sentines and may enjoy
it fully and exclusively appropriating it to
such use as may suit them
- 2 They shall solicit the proper Mage to give
them gradual possession by partition of their
demands shall mark the boundaries
with the proper land marks
- 3 The lands hereby granted is nine leagues
of the large size and is situated in the sur-
plus or vacant lands of the Ranchos of Don
Carlos Weber and Don José de Jesús Ben-
nal

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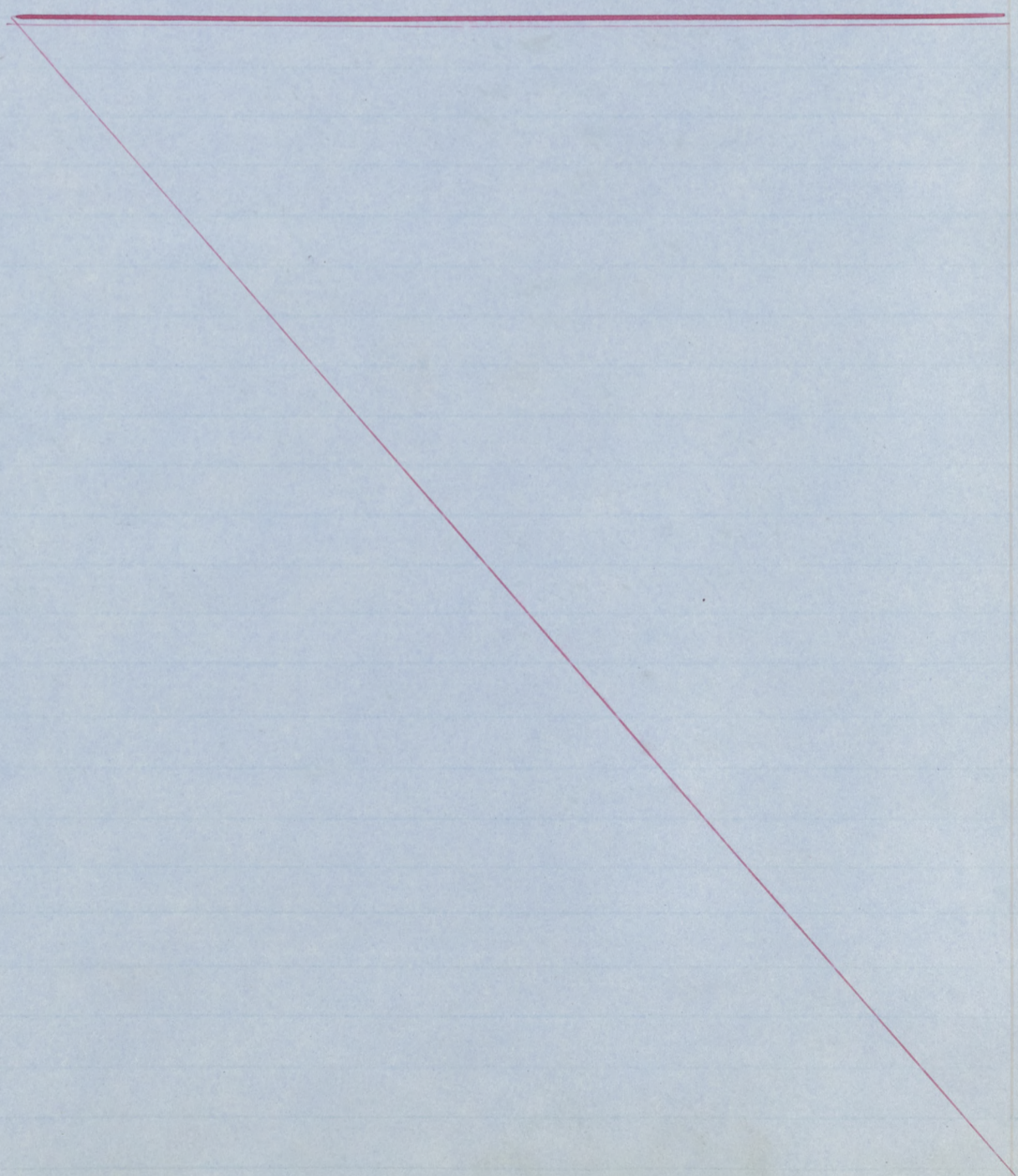
including the lands of the cove Colorado towards
the Valley The judge who shall give the permission
shall have it measured in conformity to an
inventory of the crop which will be presented by
the parties interested

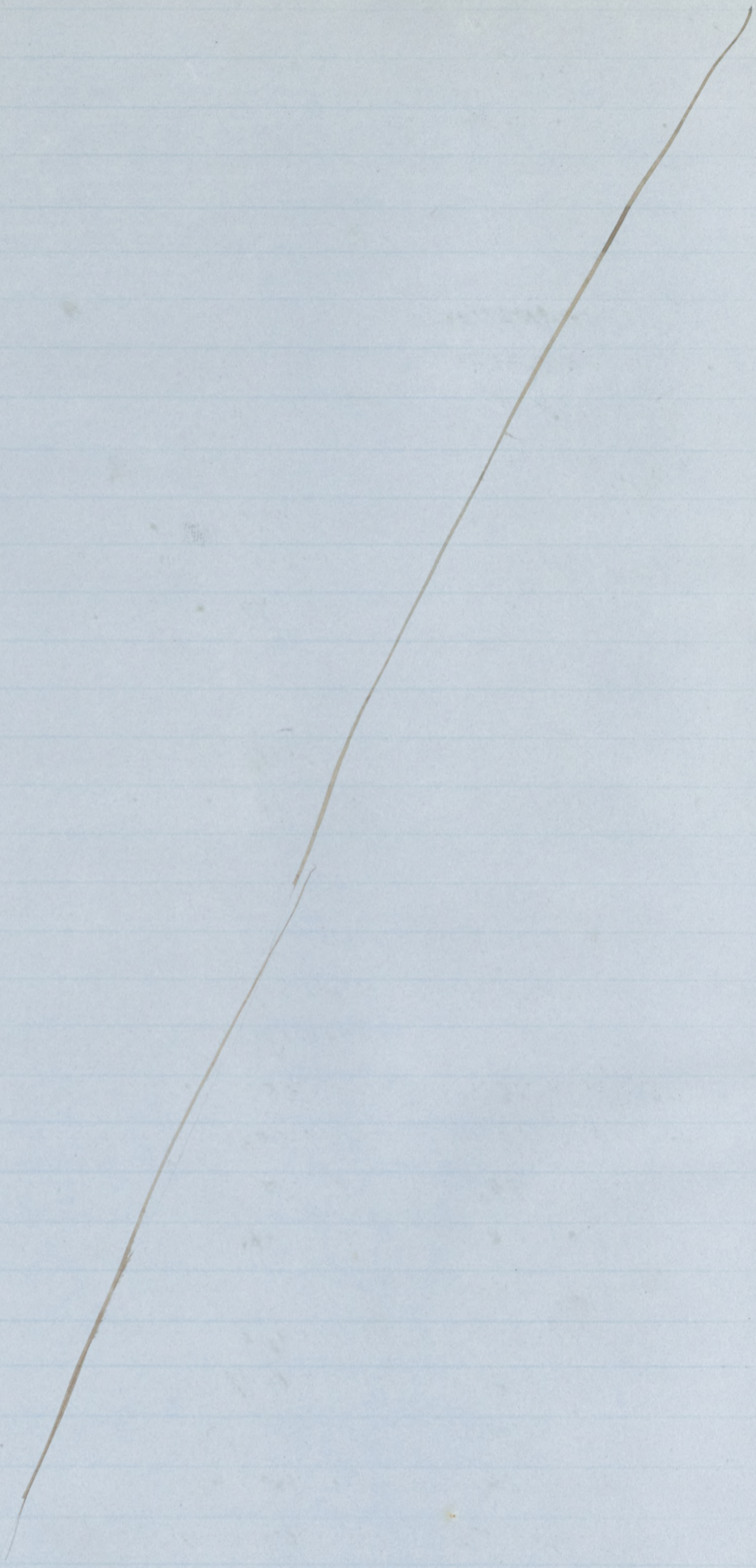
Whomsoever that this
Title being held firm and valid shall be regis-
tered in the probate book and allowed to the parties
for their protection and other purposes given
in the City of Los Angeles on common paper
because there is none sealed this 6th of May 1846

Pio Pico
Jose Maria's Menem
San Yuto

Filed in office July 6th 1852
George Fisher
Secretary

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1. 13
Pio Pico Gobernador constitucional del Departamento de California.

Por cuanto los Señores Don Luis Arenas y Don Juan Proband, han solicitado para su beneficio personal y el de sus familias los huecos o sobrantes de terrenos que resultan en el parage de las Animas y el rancho de Pula en la jurisdicción del Pueblo de San José Guadalupe, pertenecientes a los señores Don Carlos Mirar y José de Jesús Bernal, abasando las tierras del cerro Colorado hacia las caídas del valle hasta el cuupletto de nueve litios, practicadas perianate las averiguaciones que han sido necesarias, con todo lo demás que se tubo presente y ver conuino, he venido por decreto de este dia en uso de las facultades con que me hallo autougado por el Supremo Gobierno a nombre de la Nación Mexicana declarar como declaro a los Señores esperados Señores en propiedad de los huecos o terreno sobrante en los ranchos ante dichos y las tierras del cerro Colorado hacia las caídas del Valle con arreglo a la ley de 18 de Agosto de 1824 y reglamento de 21 de Noviembre de 1828 a reserva de la aprobacion de la Extra. Asamblea Departamental y bajo las condiciones siguientes.

1.^a Podran cercar lo sin perjudicar las trasvias caminos y servidumbres, lo disfrutaran libre y esclusivamente destinando lo al uso o cultivo que mas les convenga.

2.^a Solicitaran del Juez respectivo les de la posesion Juridica en virtud de este despacho por el cual se demarcaran los linderos con las respectivas moyoneras.

3.^a El terreno de que se les hace donacion es puramente de nueve litios de ganado Mayor y esta habicarlo en los sobrantes o huecos que hay en los ranchos de los Señores Don Carlos Mirar y Don José de Jesús Bernal. El Juez que obtiene la posesion lo hara medir con arreglo a orden - aura a viso del ofiseno que presentaran los interesados.

En consecuencia mandado que teniendo el presente titulo por firme y valedero se tome razon de el en el libro que corresponde y se entregue a los interesados para su resguardo y demas fines. Dado en la ciudad de los Angeles en papel comun por un

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Exhibit
M.

Original Grant
part of the
Deputation of
Ignacio del
Valle

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haber de sellado a seis de mayo de mil ochocientos
cuarenta y seis.

Pro Vico. José Mathias Moreno.

Srio. Int^o

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

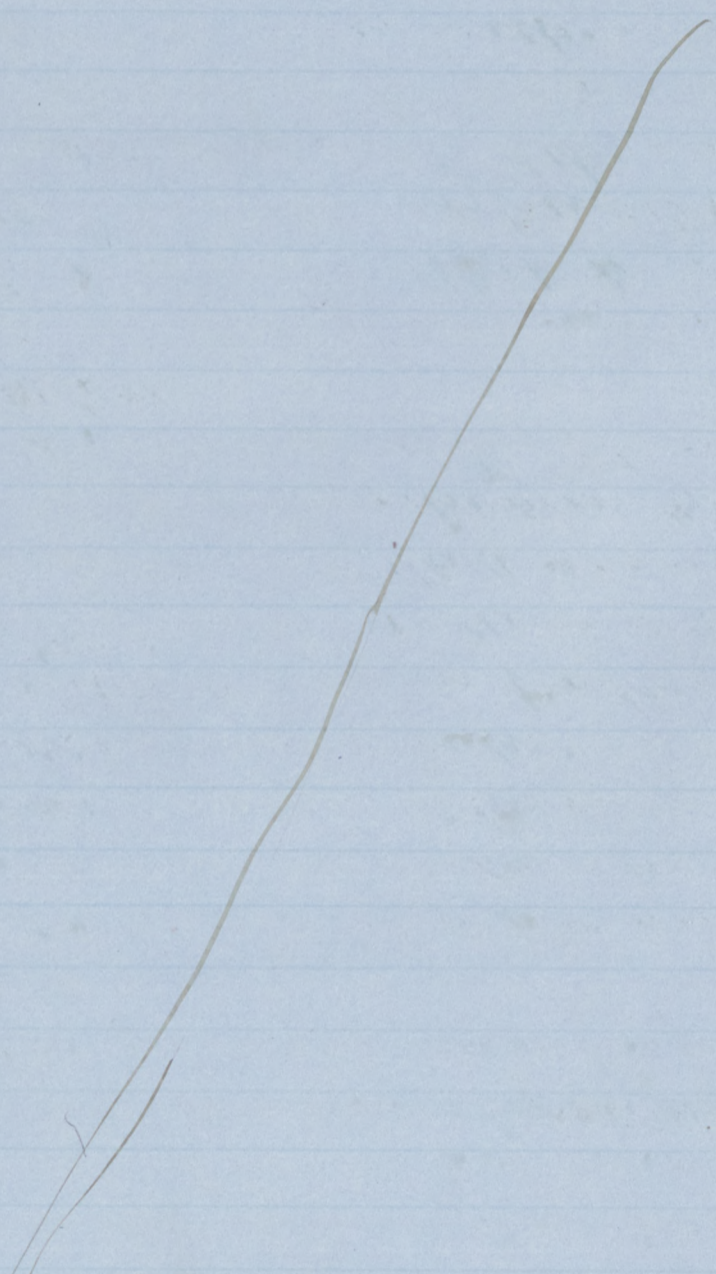
Moreno.

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Filed in office. Oct^r 18th 1852.

Geo. Fisher.

Secy.



15 M
Translation
of Original
Grant
Number 84
M

Pu Pi Constitutional Government of the Dep
of the Californians
Gobernador de las Californias } Whereas Don Louis Alvarado and
Don Juan Boland have solicited
for their personal benefit and that of their fam-
ilies the vacant spaces or surplus lands which
remain in the place called Las Animas
and the Rancho of Pala in the jurisdiction of
the Pueblo of San Jose Guadalupe belonging
to Don Leonardo and Jose de Jesus Bernal
including the land of the Cerro Colorado (Red
Mountain) towards the slope (caidas) of the
Valley amounting to nine leagues

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The necessary
inquiries having been made and considering
everything else presented and proper to be con-
sidered in the exercise of the powers with which
I am invested by the Supreme Government in
the name of the American Nation have deter-
mined to declare and do declare the said surplus
lands in property of the vacant or surplus
lands of the said Rancho and the land of
the Cerro Colorado (Red Mountain) towards the
slope of the Valley.

In conformity with the law
of the 18th of August 1824 and the Regula-
tion of the 21st of November 1828 with a res-
ervation of the Approval of the Departmental
Assembly and under the following conditions
1st They may unless otherwise requiring the
cessings roads and sentinas they may en-
joy it fully and exclusively applying it to the
use and cultivation which may best suit
them

2 They shall solicit the proper Judge to give
them judicial possession in virtue of this
decree by which the boundaries shall be marked
with the proper monuments

3 The land of which admittance is made to them
is nine leagues (de Saindo Mayor) and is
situated in the surplus or vacant lands of the
Rancho of Don Leonardo and Don Jose
de Jesus Bernal The Judge who may give
the possession shall have it measured

in conformity with the admiral's order of the
Board (wrap) which the parties will present

Whence it is

that this letter being held firm and valid be re-
-corded in the proper book and be delivered to the
parties for their security and other purposes. Given
at the City of Los Angeles on common paper this
being unsealed, the 6th of May 1846

His Pico

José Matias Muñoz

Secretary ad interim

This Submissive decree is recorded in the proper
Book

Munoz

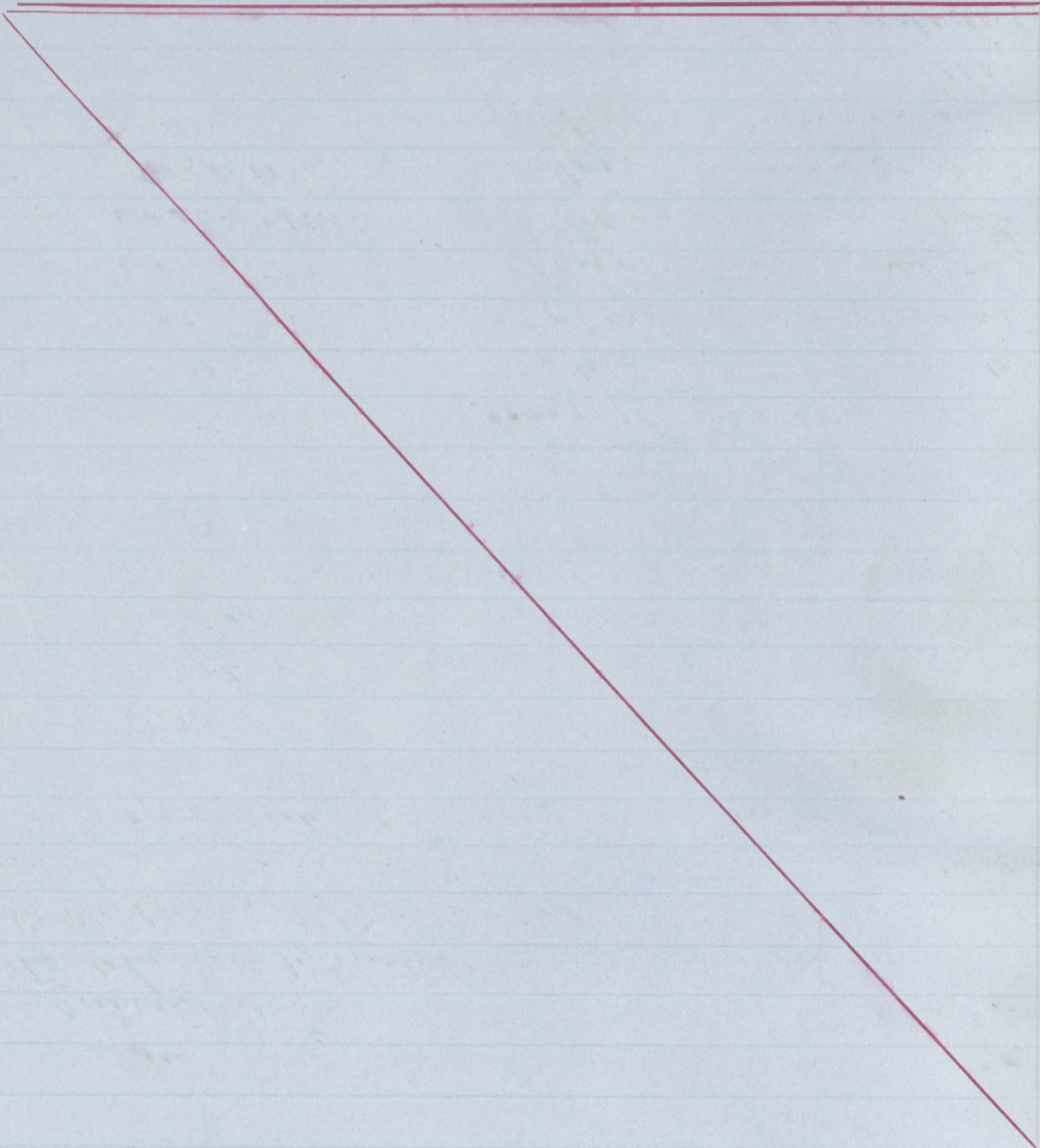
Annexed to the Department of Affairs del Valle
October 18th 1852

Filed in Office October 18th 1852

George Foster

Secretary

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17 Centipede
Copy of will
of Jm Jones
& Probate

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I James M Jones by the Grace of God of sound
discernment by this my last will and testament
do will and bequeath unto Dr J L Hurst of
Plaquemine La all my real and personal
property whomever situated in trust for the use of
his children Joseph DASHALL and Annabella L
Hurst in equal portions or if either should die
before majority then for the sole use of the sur-
vivor provided however that the said J L Hurst
shall have full power to sell the said per-
sonal property of the same as he may deem
proper and use the proceeds according to his dis-
cretion as he thinks necessary best accord with
the interests of the said children

and the
portion of the said J L Hurst shall begin
immediately deducting losses expenses &c whomever
shall be twenty one years of age and that of
Annabella L Hurst or her heirs after
said deduction shall begin for as the
age of eighteen years or sooner if the same
with the consent of her father or Guardian

The
above disposition is made subject to a deduc-
tion of ten percent which the said Hurst shall
take from the cash value of my property and
apply towards building a tomb for the body of
my mother provided the cash value of said
property shall exceed five thousand dollars
I appoint J H Mulmer of Natchez in the at-
tendance to take charge of said administration upon
my estate until the same can be taken pos-
session of by said J L Hurst but they shall
deliver to their possession thereof and remain

Thurs
seven and a half all testaments made by
me anterior unto me at Iberville Parish
Louisiana this fourth day of September eight
hundred fifty one

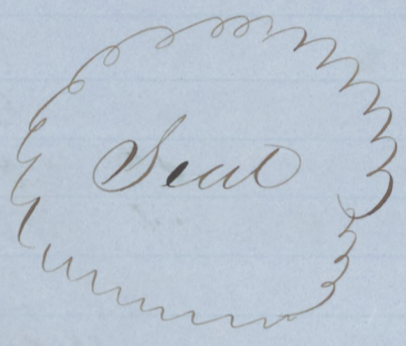
Attest
H. H. Taylor
Paul DeLong

James M Jones

State of Louisiana
Parish of Iberville
Baptiste Louis Petit Recorder and Notary

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in and for the Parish of Iberville State of Louis-
iana Presumably came and appeared James
Mc Jones Esquire presumably himself to me as being
the same person who had executed and signed
and sealed the within instrument purporting
to be his last will and testament whereunder
it is said that he executed and signed the same
of his own free will and accord and for the same
purpose therein mentioned

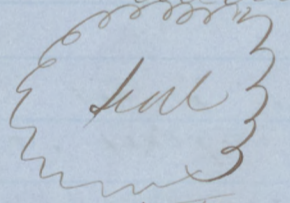


Intestines whereof I have
known to set my hand and
affixed the seal of my office
at the Parish of Iberville this
4th day of September in the
year of our Lord one thousand
eight hundred and fifty one

State of Louisiana }
Parish of Iberville }

Notary Public
to the Judicial District Court
Ulrich Copier

Paul Deslinex Clerk of said Court in and
for said Parish and state do hereby certify
that L Petit whose name is subscribed to the
 foregoing acknowledged instrument is and was at the
time of signing the same duly sworn and commis-
sioned Notary and Ex Officio Notary Public in
and for the Parish of Iberville State aforesaid
and that this acts as such full faith and
credit as aue and owing



Intestines whereof I have
known to set my hand and
seal of said Court at the Parish
and state aforesaid this fourth day of September
in the year of our Lord one thousand
and fifty one

Paul Deslinex Clerk

Witness December 17th 1851 A.C. Andrew Clark
of T Nylans Presumably appeared in open
Court and being sworn says that he knows James
Mc Jones deceased that the will herein pro-
porting to be the last will and testament
of James Mc Jones deceased is in the hand
writing of the said James deceased that he knows
his hand writing well having often seen
him write and that the signature to said will

believed to be genuine and that he saw him frequently during the months of October, November and the first part of the month of December and that the said James deceased was during that time of sound mind and disposing memory that he saw him but a few days before his death and whilst in his death bed, that he was then of perfectly sound mind and memory

W. J. Hyland

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John H. Moore being sworn says that he is well acquainted with the hand writing of James M. Jones deceased, having often seen it and seen him write and from his knowledge of his writing he believes that the will herein to be in the hand writing of James M. Jones deceased and that the signature thereto is his signature

That he saw him frequently prior and subsequent to the date of this will and believes him to have been of sound and disposing mind

John H. Moore

H. C. Mulrine being sworn says that the deceased James M. Jones claimed to him the will now here in court to be probated in the latter part of October 1857 or the first of November of the same year and that at the time of claiming to him the said James deceased was of sound and disposing mind

H. C. Mulrine
J. W. Redman County Judge and Ex Officio Probate Judge of Santa Clara County Certifies that the above named will and testament of James M. Jones deceased was this day produced in open court before me and the above testimony taken and subscribed in open court

J. W. Redman
Ex Officio Probate Judge of Santa Clara
It is therefore ordered that said will be probated and recorded according to law

J. W. Redman
Probate Judge
But remanded that at any time of

The Probate Court of Santa Clara County held in the Court House of said County in the City of San Jose on the 29th day of January A.D. 1852 pursuant to the order of the Probate Judge during which the following admission was made to wit in the matter of the Estate of James M. Jones deceased

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In this case H. C. Melroe having filed the last will and testament of James M. Jones deceased for Probation and proof having been made of and notice given of said application and the evidence of C. J. Myland John H. Moore and H. C. Melroe being heard and no opposition being made and the Court being satisfied that said will had been regularly made

It is therefore ordered by the Court that said will be admitted filed recorded and confirmed as Probated

State of California
County of Santa Clara
John B. Henson County Clerk of Santa Clara County and Ex Officio Clerk of the Probate Court of said County do hereby certify that the foregoing is a true and correct copy of the original will of James M. Jones deceased

The Testimony of the witnesses in relation thereto the certificate of the proof thereof and the order admitting the same to Probate as the same now appears of Record of said Probate Court

Seal

Witnesses whereof I have hereto personally heard and affixed the seal of said Court this 27th day of October A.D. 1854
John B. Henson Clerk
Prof. L. S. Rich
Deputy Clerk

Filed in Office November 9th 1854

George H. Hays
Secretary

21 Deed from Know all men by these presents that I Don Luis Luis Amos

Know all men by these presents that I Don Luis Luis Amos amos of San Jose in consideration of the sum to James M of eleven hundred dollars to me paid by James M Jones as herein after set forth do hereby grant bargain sell and convey with the said James M Jones his heirs and assigns the undivided half of a certain Rancho or tract of land situate within the County of Santa Clara south eastwardly from San Jose being the same Rancho or tract granted and due to said Don Luis Amos and Don Juan Rol and jointly by Don Pio Pico Governor of Alta California at Los Angeles in May 6th 1846 and which is described in said deed " Los huecos o Sobrantes de terrenos que resultan de las Animas y el Rancho de Pala en la jurisdiccion del Pueblo de San Jose Guadalupe perteneciente a los Señores Don Carlos Weber y Jose Jesus Bernal abrazando las tierras del Cerro Colorado hacia las caidas del Valle hasta el completo de nueve Sitios)

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PAGE 21

vacant land which remains from Las Animas and the Rancho de Pala in the jurisdiction of the town of San Jose Guadalupe belonging to Charles Weber (or Weber) and Jose de Jesus Bernal comprising the lands of the Red Mountain (or highlands)

Thence descending towards the valley to the full complement of nine leagues the portion of said Rancho or tract of which this conveyance is made being the undivided half thereof or four and one half leagues more or less with all the rights privileges and appurtenances of water wood grazing habitation mines and minerals or other privileges whatsoever thereto belonging

To Have and to Hold the same unto the said James M Jones his heirs and assigns in full ownership and possession for ever provided however that the said Don Luis shall have during the space of two years from this date the personal and non transferable right to go upon the said tract or Rancho and make any replanting

Which the said amos may therein discover but said right and privilege of replanting shall extend to but one year and

said working shall not continue more than two years from this date nor shall the right thereof be transferred in any manner

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PAGE 22

The consideration of the above sale is the sum of six hundred cash in hand paid to the Don Louis annas by the said James Mc James except whereof is hereby acknowledged

and the further sum of five hundred dollars being the fee agreed to be paid by said Annas to the said James for legal services for writing and attending to the business of the said Don Louis Annas

And should the said tract be worth more than the said sum of eleven hundred dollars then the said Louis Annas hereby makes full and free donation and gift of the surplus to the James Mc James his heirs and assigns forever. In testimony whereof I have hereunto set my hand and seal at San Francisco second day of October eighteen hundred and fifty

Louis Annas
Signed sealed and delivered
in presence of N. A. Redman

State of California
County of Santa Clara

of October A.D. 1850 personally appeared before me (N. A. Redman Notary Public within and for the state and county aforesaid) Louis Annas personally known to me to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same for the purposes therein specified

In testimony whereof I certify
N. A. Redman Notary Public
Filed 7 3/4 o'clock A.M. 3rd October 1850

J. J. Richardson
Recorder Santa Clara County
Recorded in Book of Deeds B. Pages 87 & 88
J. J. Richardson Recorder S. C. Co
Filed in Office September 19th 1853
George Fisher Secretary

John Holands and

23 Stipulation No 282

John Roland and
J. L. Hurst vs

The United States

}
} It is stipulated that all
} papers filed and taken
} in the case and taken
} in the case number 333 Charles M. Weber all
} amount and number 617 predeceasual
} will claimants except those concerning
} and testimony taken before such claimants
} shall be considered as taken and filed in this
} case number 282 and shall form part of the re-
} cord, in so far as the same may be legal
} evidence

October 18th 1854

J. H. McKim
United States Law Agent
A. P. Butterfield

Attorney for claimants

Filed in Office October 23 1854

George Fisher

Secretary

Recorded in Journal Volume 4 Page 80

George Fisher

Secretary

Stipulation Number 282

John Roland and

J. L. Hurst vs

The United States

}
} It is stipulated that the
} claimants have further
} time till the 10th of November next to file their
} brief and the certified copy of the will of J. M.
} Jones deceased and the deuce and nothing is to
} probate

October 27th 1854

J. H. McKim
United States Law Agent

Filed in Office October 28th 1854

George Fisher

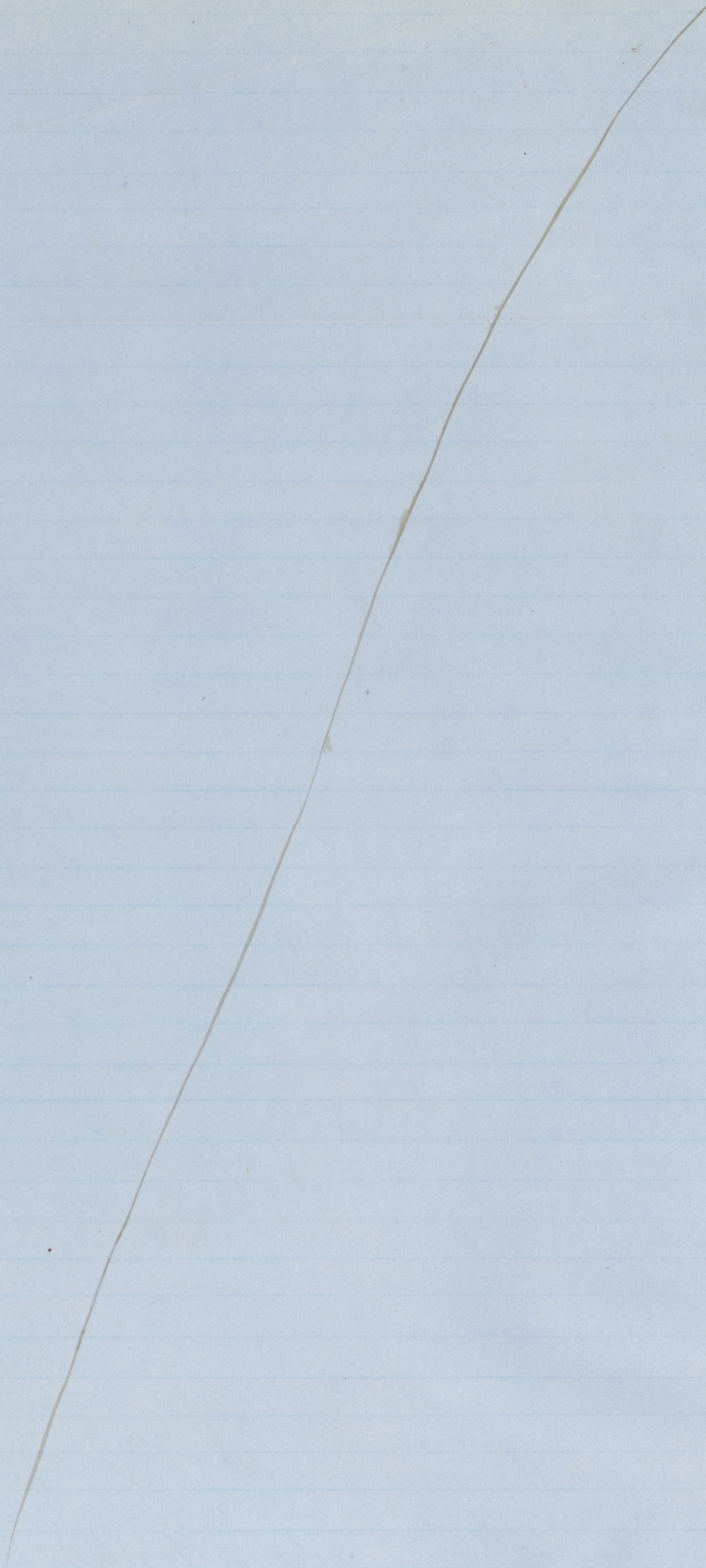
Secretary

Recorded in Journal Volume 4 Page 92

George Fisher

Secretary

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25 No. 333. To the Honorable Commissioners to settle Private Lands claim in California

The Petitioner

Charles W. Weber respectfully shows that on the 17th day of August A.D. 1839 Manuel Jimeno Casarin Governor of California by virtue of authority in him vested granted to Thomas Brown the tract of land called San Juan de San Felipe y Las Animas situated in the present county of Santa Clara containing eight sitios de San Juan Mayoralillo (more or less as shown in the map and described in the title and accompanying papers all of which is shown by the original expediente a certified copy of which is submitted herewith marked A with a translation marked B.

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The Petitioner also submits herewith a copy of the original title marked C with a translation marked D.

That on the 7th day of October A.D. 1842 sold and conveyed said tract of land to Francisco Garcia and Carlos Moreno a copy of which Public Act of Congress is submitted herewith marked E with a translation marked F.

That on the 15th day of November A.D. 1845 the said Garcia and Moreno sold and conveyed the said tract of land to Charles Maria Weber a copy of which conveyance is submitted herewith marked G with a translation marked H.

It is also shown by the expediente a certified copy of which is submitted herewith as aforesaid that the said tract to Thomas Brown was duly approved by the Department Junta on the 22nd day of May 1840.

The Petitioner also submits herewith a copy of certain judicial proceedings before the Superior Tribunal of California fully establishing the validity of the aforesaid Grant marked I with a translation marked J.

The Petitioner also represents that the said land has not been surveyed by the Surveyor

Journal of California best that it should be
carefully deposited in the Grant and account
- paying papers and are well known

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PAGE 25

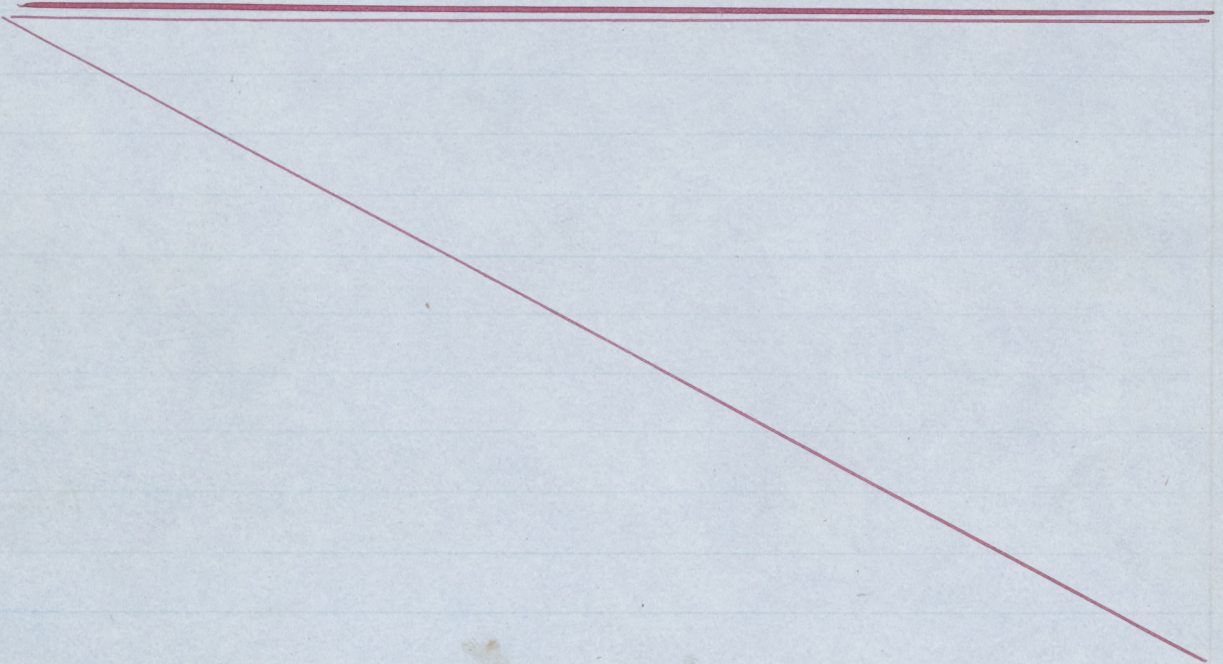
That
the petitioner and that under whom he holds
have been for some time in possession of the
petitioner's name in the possession and occupa-
- tion of the said tract of land

That he knows of no conflicting claims
That he desires for confirmation of title
upon the original documents copies of which
are submitted herewith upon the records
and minutes in the archives now in charge
of the Survey General and upon such other
and further proofs as he may be advised are
necessary

Wherefore he prays the Commission
to confirm to him the tract of land aforesaid
By his Attorney
Kathleen Peck & Willings

Filed in Office September 11th 1852
George Furbur
Secretary

Recorded in Record of Petitions Vol 1 pages
231, 232, and 233
George Furbur
Secy



27 No. 333

Deposition of Office of the California Land Commission
Pablo de la Guerra
Los Angeles September 10th 1852

Antes de que yo me acordara de presentarme
al Comisionario para que me permitiera
deponer en el expediente de la causa
de la Guerra contra el Sr. Wain
cuyo expediente es No. 333 en el expediente de la
Comision de la Guerra contra el Sr. Wain
cuyo expediente es No. 333 en el expediente de la
Comision de la Guerra contra el Sr. Wain
cuyo expediente es No. 333 en el expediente de la
Comision de la Guerra contra el Sr. Wain

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The Law Agent was notified
and attended

Question to Testors proposed
by Claimant's Counsel the interrogatories
are as follows

Question what is your name
and place of residence

Answer My name is Pablo
de la Guerra I am about 32 years of age
I was born in Santa Barbara and have lived
in Santa Barbara all my life

2 Questions examine the
papers before you and make and file
into the deposition and sign of the
deponent and the document original and
copies

Answer I am acquainted with
the signatures of Manuel Jimenez Francisco
de Arce Mariano Quintanilla Jose Maria
Castagnares Antonio Maria Pico and
Juan Malvarin

These signatures together with
copies of the document and the document
itself are to be kept by me as evidence and
originals

Pablo de la Guerra
U.S. Law Agent present

Sworn to and subscribed
before me this 10th September 1852

Harry J. Thornton
Commissioner

Filed in Office September 11th 1852

George Fisher
Secretary

Deposition of
Antonio Nica
Pico

San Francisco January 8th 1853
On this day before Commissioner Harry J.
Thurston Esq. Antonio Nica Pico depones
in behalf of the claimant of the Weber patent
No 333 and was duly sworn his evidence
being interpreted by the Secretary

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The United States asso-
ciate Law Agent was present

My name is Antonio
Nica Pico my age is 44 years I reside in
San Jose and have lived in California all
my life

I have the signatures of Pedro Guillen
Jose Garcia - Tomas G. Boone Bruno Loto Fran-
cisco Garcia Carlos Munoz and the signatures
of the papers before me marked not
all genuine and the signature of Antonio Nica
Pico to the same papers as deposed is my
own signature

Garcia occupied this Rancho
in 1842 and afterwards until he sold it
to Weber who has occupied it since with
his cattle and servants and abuse

Antonio Nica Pico
All Law Agent present

Sworn to and subscribed before me this
8th of January 1853

Harry J. Thurston
Commissioner

Felix in Office January 8th 1853

George Furber
Secretary

Records in Landman B. Vol 2 page 47
George Furber
Secretary

29 I. G. D. R

Jurado Constituido, año de
de S. José de Alvarado } 1839.

Expediente

Promovido por D. ^{uy} Tomas Borau y En
Solicitud del Paraje nombrado
D. ^{uy} Felipe y Las Animas

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2. J. D. R. Monterey 18 de Mayo de 1839. Informe el Alcalde del pueblo si el terreno que se solicita es baldio y si no pertenece algun particular Mision o pueblo.

Don Prefecto Tomas Borrero casado con Mejeana y Katon Deli residente en este pais, ante V. O. en el mayo respecto no presentamos y de cuantos que poseemos el numero de doscientos Cabezas de Ganado Vacuno para cuya

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PAGE 29

Castro.

conservacion y aumento en terreno a proposito y hallandose baldio el paraje nombrado, S. Felipe y las Amunias situado al Oriente de este lugar suplicamos se digna. V. O. adju dicarnosle.

Expelte
continued,

Este terreno no pertenece a ningun individuo, esproacion ni, mision por lo que rendidamente.

V. O. O. suplicamos se sirva de proveer como llevamos pedido en lo que recibiremos gracia V. O. no yendo este en papel sellado por no haverlo.

pueblo de S. Jose de Alvarado y Mayo 14 de 1839. Tomas G. Borrero Katon Deli.

Señor prefecto Por los informes que he tomado, acerca del terreno q. se pretende, resulta ser baldio y no pertenece a ningun particular ni mision ignorandose si correspondiera a los ejidos y propios de esta poblacion, cuando se le se

3. J. D. R. Nalep, pues dictara enaatro leguas al N.E. de ella; con lo que he dado cumplimiento al decreto de V. O. que antecede.

S. Jose de Alvarado 23 de Mayo de 1839.

Jose Noriega.

El terreno que solicitan los Interesados es absolutamente baldio y puede considerarse en propiedad de ningun particular ni pueblo advirtiendo q. los solicitantes no tienen Carta de naturalizacion pero tienen en el Departamento ochos años de residencia y el primero es

casado con Mexicana, en cuyo tiempo han adquirido onradamente su subsistencia y el numero de bienes que manifiestan en su representacion.

L. Juan de Castro 23 de 1839.

Jose Castro

Monterey 1^{ra} de Agosto de 1839.

Visita la peticion con que da principio este Expediente el informe del Alcalde del pueblo de San José y el de el Sr prefecto del primer distrito con todo lo demas q^{se} se tuvo presente y ver con rra de conformidad con las leyes y reglamentos de la materia de clar a Tomas Bonin dueño del ranaje nombrado Cañada de San Felipe y las lminas en cotencion de dos sitios de ganado mayor colindante con el Rancho de D^{ra} Jose Benal, con el de Don Jose Chavolla, con el de D^{ra} Juan Alvarez y con la Dena de Sta Isabel sujetandose a pagar el canon correspondiente en caso que el dho terreno pertenecia a los egrelos del pueblo de San José Guadalupe y a las concuicivies que se estendian en el titulo del Sr D^{ra} Manuel Jimeno Casarin primer vocal propietario de la Exema Junta del Departamento de las Californias en ejercicio del Gobierno del mismo, lo memo de decreto y firmo de que doy fee.

Manl. Jimeno

Remeriseo C. Arce

Oficial 1^o

Monterey 19 de Mayo de 1840.

Dada cuenta a la C. Junta Departamental acordó en sesion Ordinaria de este dia que J. G. D. R. pase a la Comision de Agricultura.

Jose J. Hernandez

Juv.

En Veinteydos del mismo lo devolví en comision con el dictamen que oia acompa^{no}.

Hernandez

Monterey 13 de Junio de 1840.

En Vista de la aprobacion otorga

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Expedite
con tinuo
L. G. D. R.

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=cada en veinte y dos del mes pasado por
la E. Junta Departamental, libese testimo-
nio de ella a la parte de D. Tomas Bour
en confirmacion del terreno S. Felipe y
las Animas que obtuvo en diez y siete de
Agosto de mil ochocientos treinta y nueve
El Sr. D. Juan B. Alvarado Gobernador
Constitucional del Departamento de las
Californias asi lo proveyo y firmo el d^o
doy fee.

Alvarado

b. L. D. R.

1 Are polvoros
2 Map. }

33 y. L. D. R

Comis. Tor.

La Comision de Agricultura y comercio unidas en cargo de Sr. U. C. de dictaminar los Expedientes que en la Seccion anterior acompaño el Excmo Sr. Gobernador y conserchido por el mismo Gobernador y en-contrandolos conformes segun lo Actuado e informes y demas que ver se ha podido proponer a la deliberacion de U. C. los Articulos siguientes.

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map 38

Artto 1º. Se aprueba la Consecucion hecha pº el Gobno Departamental con fecha 1º de Agosto de 1839. en la persona de Tomas Boun del paraje nombrado D.º Felipe y las Amunias.

2º. Que se devuelva al Excmo Sr. Gobernador el Expediente pº los fines convenientes Monterey Mayo 21 de 1840.

Jose Rafael
Gonzales } J. Arguilla

J. L. D. R Monterey 23 de Mayo de 1840.

En sesion de este dia se aprobo por la C. Junta Departamental los dos articulos con que con elnse el dictamen anterior.

Manuel Jimeno
Pasell? } Jose S. Hernandez
Ind.

Office of the Surveyor General of the United States for California
J. 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 Mexican Territory or Department of Upper California do hereby certify that the Eight preceding and hereunto annexed pages of tracing paper numbered from One to Eight inclusive and each of which is verified by my initials (J. D. R) exhibit true and accurate copies of certain documents on file and forming part of the said Archives in this Office

33 y. J. D. R

Como Sor.

La Comision de Agricultura y comercio unidas en cargo de p. U. C. del dictamen los Expedientes que en la Seccion anterior acompaño el Excmo Sr Gobernador y conserchdo por el mismo Gobernador y conserchandolo conformes segun lo Actuado e informes y demas que ver se ha podido proponer a la deliberacion de U. C. los articulos siguientes.

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PAGE 32

may 38

Art. 1º Se aprueba la Consecucion hecha p. el Gobno Departamental con fecha 1º de Agosto de 1839. en la persona de ^{el} Tomas Boun del paraje nombrado 2.º ^{el} Felipe y las Amunias.

2º Que se devuelva al Excmo Sor Govn el Expediente p. los fines convenientes monterey mayo 21 de 1840.

Jose Rafael

Gonzales

J. Arguillo

J. L. D. R monterey 23 de mayo de 1840.

En sesion de este dia se aprobo por la C. Junta Departamental los dos articulos con que con el n.º el dictamen anterior.

Manuel Jimeno
Presell?

Jose S. Fernandez
Sno.

Office of the Surveyor General of the United States for California
J. 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 Mexican Territory or Department of Upper California do hereby certify that the Eight preceding and hereunto annexed pages of tracing paper numbered from One to Eight inclusive and each of which is verified by my initials J. S. D. K exhibit true and accurate copies of certain documents on file and forming part of the said Archives in this Office

Seal In testimony whereof I have
hereto signed my name Officially
and affixed my private seal (not hav-
ing a Seal of Office) at the City of San
Francisco Cal. the 21st day of August
1852.

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Saml. D. King
Surveyor Genl. Cal.

Filed in Office Sept. 11th 1852

Geo. *W* Fisher Secy



35-

Traductorio
of Expediente

Senor Prefect

Me Doms Bernabé Carrizosa
to a very nice woman and Antonio Dili
residents in this country before your Honor
with the greatest respect present themselves
and say

That we possess the remainder of two
hundred head of great cattle full of reproduction
and increase of which we are in want
of a plot of land and the place nearest San
Felipe and Las Animas situated to the
East from this place being vacant we
pray your Honor to be pleased to grant it
to us

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This land does not belong to any individ-
-ual coparticular or mission therefore we
earnestly beseech your Honor to have the
goodness to provide us we have petitioned
in which we will receive favor & this
not being our stamped paper because there
is none

Pueblo of San José de Alvarado May 14th
1839

Signid
Fornwald Bower
Senor Prefect

Signid
Antonio Dili

It appears from the refer-
matives which have taken relation to the
land petitioned for that it is vacant and
belonging to no individual or mission it
not being common-ublation it will correspond
to the common or Municipal lands of this
town when they may be marked out

It is distant four leagues to the South East
from it in the which have complied with
the foregoing decree of your Honor

San José de Alvarado May 23rd 1839
Signid José Benigno

The land which the petitioners petitioned
for is absolutely vacant and may be
granted to them without prejudice to any
individual or Pueblo observing that the
petitioners have notice of substitution
but they have resided eight years in the

Department and the firm is married to a Mexican arguing which time before he procured his substance and the number of cattle which his representatives from San Juan de las Abasco May 23rd 1839

Sign'd Jose Claster

Mountain August 17th 1839

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Having seen the petition with which this Expediente begins the report of the Alcalde of the Pueblo of San Jose and that of his Council the project not distinct with all other things which were represented and deemed proper to be seen in conformity with the laws and regulations on the matter I declare for the same being origin of the place named Guadalupe de San Felipe y Las Animas.

In extent the square leagues bounded by the Rancho of Don Jose Bernabé of that of Don Jose, Lavolla of that of Don Juan Alvarez and of the Lima of Santa Catalina run among subject to pay the corresponding municipal tax in the lands of the Pueblo of San Jose Guadalupe and to the conditions which may be made out in the title

Senor Don Manuel Jimenez Gasparin first register of the Court Excellent Junta of the Department of California in Mexico of the Government of the same name decorous and signed it of which I certify

Sign'd Manuel Jimenez

Sign'd Francisco Arce

1st Clerk

Mountain May 19th 1840

Reported to the most Excellent Departmental Junta it was resolved in ordinary session of this day that it pass to the Committee on agriculture

Sign'd J. F. Fernandez

with the 2nd of the same the committee advised and it with the report which I transmit herewith

Sign'd Fernandez

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41355

Most Excellent Sir

The Minister Committee on Agriculture and Commerce charged by your Excellency to report on the expenses which in the previous session of the Government were granted by the same Government and funding them in conformity according to that purpose, the various matters and other things which may have been able to see proposed to the celebration of your Excellency the following articles

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1st) Appoint the Trust made by the Department Government dated August 17th 1839 with the purpose of founding town to the place named San Felipe of Las Animas

2nd) That the expedients mentioned to his Excellency the Governor for the commitment purposes

Mounting May 21st 1840

Signis J. Rafael Gonzalez
J. Arguilla

Mounting May 22nd 1840

In view of the day the most Excellent Departmental Junta approved the two articles with which the foregoing report concludes

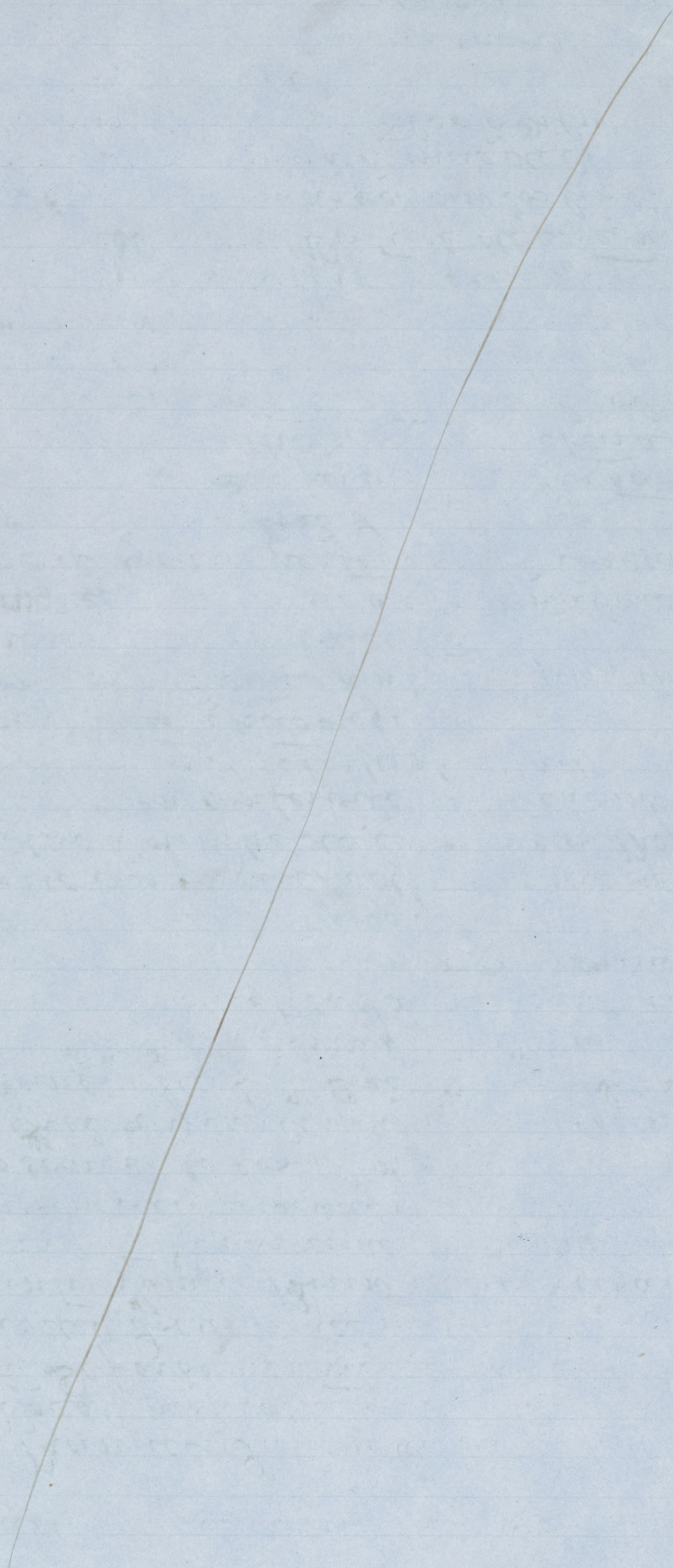
Signis Manuel Jimenez
Signis J. Ferrnandez
Mounting June 13th 1840

In view of the approval granted on the 22nd of last month by the most Excellent Departmental Junta let a diploma be issued to the party of San Juan in confirmation of the town of San Felipe of Las Animas which he obtained on the 17th of August 1839

Signis Juan B. Alvarado Constitutional Governor of the Department of the Californias
Signis Alvarado

Filed in Office September 11th 1857

George Fisher
Secretary



45
ND



Delto 1.º Deis pesos:

Habilitado provisoriamente por la Aduana
Maritima de Monterey para los años de 1839

Document of 1840.

No. 6. annexo / Alvarado

Antonio M.º Qui

to the Depo of
pablo de la Que
ra taken before
Comt. Thornton

§ 1.º

Manuel Jimeno Casarin primer
Vocal propietario de la Bodega p.m.
ta Departamental de las Californias
en ejercicio del Gobierno del mismo.
por cuanto Juanas Boun naturalizado
y casado en este Departamento ha pretendido
para su beneficio personal y el de su familia
el terreno conocido con el nombre de Canada
de San Eclipse y las Animas colindante
con el Rancho de D.º José Bernal D.º José
Chavolla, D.º Juan Alvarez y la Buena de
Santa Isabel: practicadas previamente las
diligencias y averiguaciones convenientes
segun lo dispuesto por leyes y Reglamentos
usando de las facultades que me son
conferidas a nombre de la Nación Mexica
na, he venido en conferirle el terreno mencio
nado de el onem de la propiedad de el
por las presentes letras sugetandose a la a
probacion de la Bodega p.m. ta Departamental.
ya las condiciones siguientes.

- 1.º Pagar el canon que se le señalare si
resultare el terreno pertenecer a los ejidos
del pueblo de San José Guadalupe.
- 2.º Poner a cercarlo sin perjudicar las heredades
caminos y servidumbres, lo disputara li
bre y escusamente destinandolo al uso
o cultivo que mas le acomode pero dentro
de un año favorecera cosa y estara habilitada
- 3.º Solicitara del juez respectivo que le de
posesion juridica en virtud de este despa
cho por el cual se demarcaran los lindes
en cuerpo limites p.m. ta a mas de las mof
neras algunos arboles frutales o silvestres
de alguna utilidad.
- 4.º El terreno de que se hace mencion es de
dos sitios de ganado menor segun esplica
el diccionario que corre en el especto.

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El juez que diere la posesion lo hara medir conforme a Ordenanza que da el sobramte que resulte a la Eleccion para los usos con videntes.

Si contravinere a estas Condiciones perdera su derecho al terreno y sera demunerable por otro.

En consecuencia mando que temendose por firme y Valido este titulo se tome razon de el en el libro que corresponde y se entregue al interesado p^a su resguardo y demas fines. Dado en Monterey a diez y siete de Ayl. de mil ochocientos treinta y nueve.

Mant. Jimeno
Jernel. Acee Oficial P.
Queda tomada razon de este despacho en el libro de asiento sobre adjudicacion de terrenos Valdios.

Acee
Bello Cuarto Dos Reales.
Habilitado provisionalmt. por la Aduana Maritima del Puerto de Monterey en el departamento de las Californias para los años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.
Michel Torera Pablo de la Guerra

Por. Aseo. del Administrador
Guill. Ed. Hartwell

1 Julio

Como Don Gobernador
Jernel. Garcia natural de este Departamto. y

Monterey Ayl. 1.º del Reino de la jurisdiccion de 1842. del pueblo de San Jose Inf. el Sr. Srno. ante V. E. en la forma de el despacho tomado mas haya lugar en protodo otro si lo necesitara dijo: que 1842 tienen fare

Michel T.
Yo no necesida de un terreno para progreso de los bienes de Camp. que poseo celehe el hatu que expresa el documento que a V. E. debraermente acompaño por el que

acompaño a...

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Doc. No
continuado

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acompañé à Tomas Bone el parage nombrado
Cañada de San Felipe y las Linnias en el
concepto de que creí que había adquirido en
el un derecho legal y que estaba facultado
para venderlo mas sabiendo hoy por personas
instruidas que Bone cuando enagenó el terreno
à que me refiero no era dueño de él por que en
tres años que pasaban no lo fabricó ni cultivó
y que de ninguna manera podía venderlo
he venido à suplicar à V. E. me exonere de la
obligacion en que todavia me hallo por ra-
zon del ya citado contrato por que no he a-
cabado de pagar lo que ofrece à Bone por
el día con que equivocadamente lo consideré
en el terreno repetido. Igualmente denun-
ciando este en toda forma por Valdivia por
parte de Bone y en atención a que yo he
establecido en él algunos trabajos y al desom-
bolsar que injustamente he hecho en favor
de Bone, he de merecer de V. E. una justifi-
cacion de V. E. me conceda en propiedad el
terreno ya repetido en la misma estension
que señala el título respectivo que tengo en
mi poder y tambien respetuosamente á com-
pañía. P. D. A. V. E. imploro se dignen to-
mar en consideracion ambos pedidos de
cuya gracia mereceré reconocido jurando
lo he escrito de

Monterey Agosto 1º de 1844.

Franco Garcia

Como Sr. Gobernador

No encuentra inconveniente alguno para que
el interesado ocupe como propio el terreno que
nombran San Felipe, por derecho que le
señala D. Tomas Bone, pero en cuanto al
eximirse del pago en que compró el terreno
Franco Garcia creo que corresponde re-
solver el superior tribunal y. haberse este-
dido una escritura sobre venta del terreno
à que me refiero. La Superior disposicion
de V. E. sera lo que mejor convenga.

Pha la misma

Don J. Jimeno

Monterey Agosto 1^o de 1844.
 Conf. con un todo con el antecedente m^o
 de claro p. propi el sitio al q^d se presenta y
 en cuanto à la segunda parte sobre el pa-
 go de lo antecedente ante el juez no teniendo
 el título los condicionales de no poder ven-
 der ni enagenar &c. dirijase al Supremo
 Tribunal p^a su resolución

Michelto^{re}

Superior Tribunal de Justicia
 Informe el Sr. Juez del pueblo de S. José
 si desde el 1^o de Agosto de 1837 en q^d por
 superior título le fue concedido el terreno
 enojado con el nombre de Cañada de
 amancas y S. Felipe à D. Tomas Bon nancea
 lo tubo en cese, casa, plantíos, ni cultivo
 hta el 1^o de Octubre de 1842. en que lo
 enageno por venta à Dⁿ Jeremias Larica.

Monterey Agosto 2 de 1844.

Por enfermedad del J. Presdt^e
 José Maria Castanaref

Dello Quinto Un Real.

Habilitado provisionalmt^e por la Aduana
 Maritima del puerto de Monterey en el
 Departamento de las Californias, para
 los años de mil ochocientos cuarenta y cuatro
 y mil ochocientos cuarenta y cinco en el
 Michelto^{re} Pablo de la Guena

Por Aus^o del Actmo^o

Guiller^o Edo Hartwell

Cumplim^o del superior decreto
 q^d antecede debo decir que el
 terreno Concedido à D. Tomas
 Bon nancea à tenido finca de Casa
 Corral, sero ni siembra, pero en el mes de
 Dhs del año pasado D. Jeremias Larica
 hizo un Corral el que hasta la presente existe
 con lo que creo dar el debido cumplim^o
 pueblo de S. José Agosto 8 de 1844

Antonio M. Pico

Monterey Setiembre 12 de 1844

Como aparece perfeccionado el contrato

43

Doc. N.º 6.
continúe

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PAGE 41

hecho entre Sr. Manuel Garcia y Tomas Bon
por la Entrega q. el primero hizo al segundo
de una parte parte del valor en que compró
y la ocupación del terreno por el, no habiendo
sido reconocido Bon por la Venta q. ha-
cian no puede quedar el representante
eximida del pago y de lo que debe a
Bon pues si bien es verdad q. este en tres
años no ocupó el terreno y por tal según
el título tenía perdido su derecho también
lo es que habiendo consentido ambos contra-
yentes en la Entrega y recibo sin q. hta. espe-
tuarse se hubiese en ter puesta ninguna de-
nunciante del terreno, el Vendedor hacia
uso de la que con justo título habra adqui-
rido y en tal concepto esta Garcia obligado
a pagar a Bon. pase esta al juez de San
Diego para que lo notifique a ambas par-
tes devolviendo todo a lo que representa

Malamp
Filed in Office Sept. 11th 1852

Geo. Gershaw Clerck

44



45

Translation
of title

Stamp First Six Dollars

Provisionally authentic by the Maritime Customs
House of Montevideo for the years 1839 and 1840
Signed Alvarado signed Ant. Ma. Oro

{ Montevideo }
{ Customs House }

Manuel Juan de las Casas first
Regular Fiscal of the Port
of Montevideo Junta of the Department
of the Capital in exercise of the
Government of the same

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Whom as Tomas Berni naturally is and wants
in this Department has for his own personal
benefit and that of his family obtained for the
land known by the name of San Felipe y
Sus annos bounds by the Ranchos of
Don Jose Perera del Sr. Marcella Don
Juan Alvarez and the Sr. Juan of Santa Ysabel the
proper vicarious and examinations being previously
made according to laws and Regulations

Using
the process which are customary in the
in the name of the Mexican Nation have
conferred upon the aforesaid land accord-
ing to the ownership of the present
subject to the approval of the most Excellent
Departmental Junta and to the following
conditions

1st He will pay the Municipal tax which
may be required if the land shall prove
to belong to the common lands of the Parish
of San Jose Guadalupe

2nd He may not admit without permission
to the crossing roads and shortcuts he may
use or cultivate or fix as may best suit
him but neither one year he shall build
above and it shall be inhabited

3rd He will request the proper magis-
trate to give him juridical possession
in virtue of this title before the bound-
aries well be marked out in the limits
of which he shall place besides the boundary
stone first or first two of any other
character

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4th Holland of which mention is made
is two square leagues according to the maps
which goes with the Espediente

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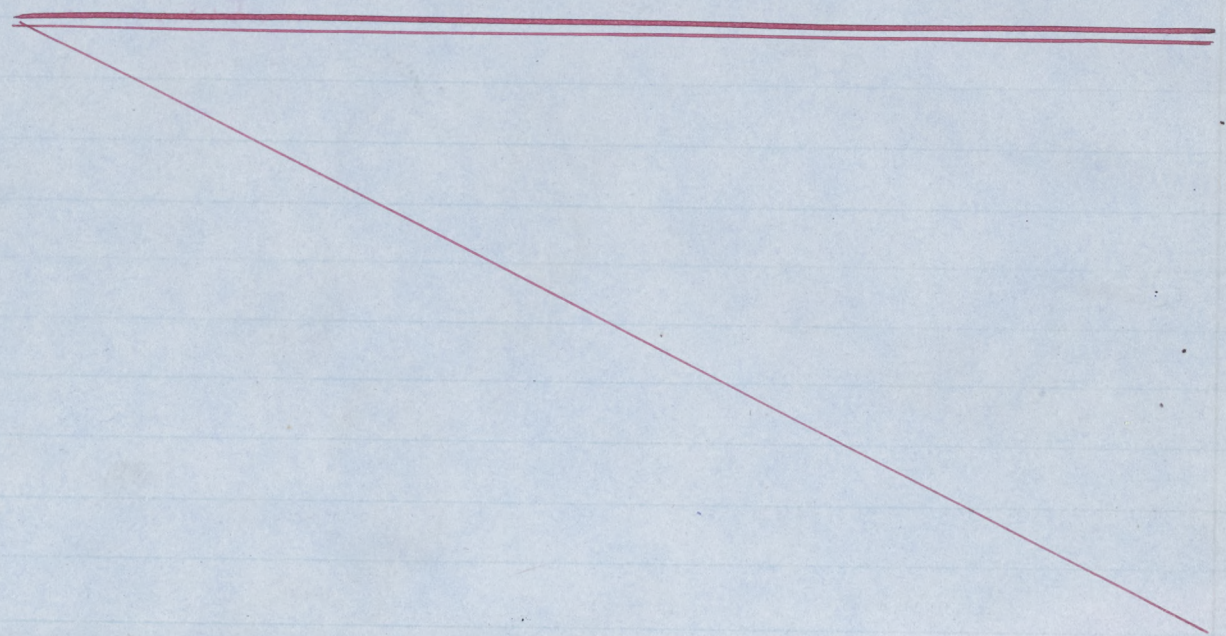
The Magistrate
who may give the possession will cause it to
be measured in conformity with the order
-ance leaving the surplus which may result
to the nation for its common use
5th If the contrary to these conditions be
well established right to the land and it
may be determined by another

In consequence
thereof that this title being held as firm and
valid note be made of it in the correspon-
ding book and it be allowed to the party
-interested for his security and other purposes
Given in Mexico on the 11th month of May
1852 eight hundred thirty nine

Signat) Manuel Jimenez
Signat) Francisco Arce
pt. Alcala

Note has been made of this title in the
book of entries of grants of vacant lands
-outlets
Signat) Arce

Filed in Office September 11th 1852
Judge Foster
Secretary



4 Translation
of Proceedings
in Spanish
Tribunal

Stamp Permit to Trade
Provisionally authorized by the Maritime
Customs House of the Port of Monterey in the
Department of the Californias for the years
1844 and 1845

signed *Micetulluma* *Pablo de la Cruz*
(Seal of)
(Customhouse)
(Monterey) } signed *Guillermo C. Bartol*
} *Tobias Excelling* the
} *Gaming*

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PAGE 44.

Monterey August
1st 1844
Let the Secretary
of state report -
calling for a
matter of business
N
signed
Micetulluma

I Francisco Garcia a
native of this Department
and resident of the town
of Monterey of the Parish of San
Francisco your Excellency
in the most proper form
in Justice say that in 1842
having need of a vessel for
the transport of the
stock which I possess I ex-
ecuted the contract shown
by the document which
I only transmit herewith
to your Excellency by which
I purchased of Tomas
Bonetto place owner

Canada de San Felipe y Las Animas
in the possession of the said Tomas
Bonetto which is a legal right and has
power to sell it

But knowing from your
well informed persons that when I once
obtained the land to which I refer I
was not the owner of it because in the
three years which passed he on this land
on it cultivated it and that he would
not sell it in any manner I came
to ask your Excellency to relieve me from
the obligation under which I still am
in reason of the affair and contract for I
have not yet finished paying that which
I promised to him for the right which I
sincerely considered him to have in
said land

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PAGE 45

My dear Annamary this land in all forms
as a cant on the part of Bone and in view
of the fact that I have established in it
some labour and of the amount
which I have unjustly made in favour
of Bone I will assume of your willingness
and justification that you are in
in full the land here refers to in the same
extent as mentioned in the respective
letters which I have in my power and
also respectfully transmit

Whence I am
pleased you are willing to take into consid-
eration both petitions presents from I
will have great satisfaction what may
be necessary &c

Woburn August 1st 1844

Signis Francis Garcia &
Tobias Excelling the Sumner
I find no objection to allowing the
person entitled to occupy said land
the land named San Felipe by the
right which Don Juan Brown claims
to have but with respect to the same
from the payment of the amount
in which the resident Francis Garcia
purchased I think that it belongs to the
supreme Tribunal to decide as to the
rights relative to the sale of the
land to which I refer you by all means
supreme disposition will be the most
proper

ate the same

Signis Manuel Jimenez

Woburn August 1st 1844

I must comply with the foregoing
request I desire the peace to be the property
of him whose interests and with respect
to the same part upon the payment
of that contract for before the magistrate
the case not having the conditions of
not being able to sell or mortgage &c let
it be sent to the supreme Tribunal for
decision

Signis Nictotuma

Superni Tribunal of Justice

Let the mag

strate of the Puerto of San Jose representation from the 7th of August 1839 in which the land known by the name of Cañada de las Animas of San Felipe was granted to Don Francisco de las Casas in trust for house plantations or cultivation until the 7th of October 1842 on which day he alienated it by sale to Don Francisco Garcia

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Monting August 2nd 1844

On account of the sickness of his Honor the President

Signo Jose Maria Castaneda

Señor Fifth of Real

Provisionally

authorized by the Maritime Customs House of the Port of Monting in the Department of the Californias for the years 1844 & 1845

Signo Mititacion for Pablos de la Sierra
seat of the }
Customs House } by Manuel A. Barrios

In compliance with the Superni decree which precedes I have to say that the land granted by Don Francisco de las Casas has any improvement whatever house coral fence or planting but in the month of December of last year Don Francisco Garcia made a verbal report still exists with which I think it is due compliance

Puerto de San Jose August 8th 1844

Signo Auto Real C. C.

Monting September 12th 1844

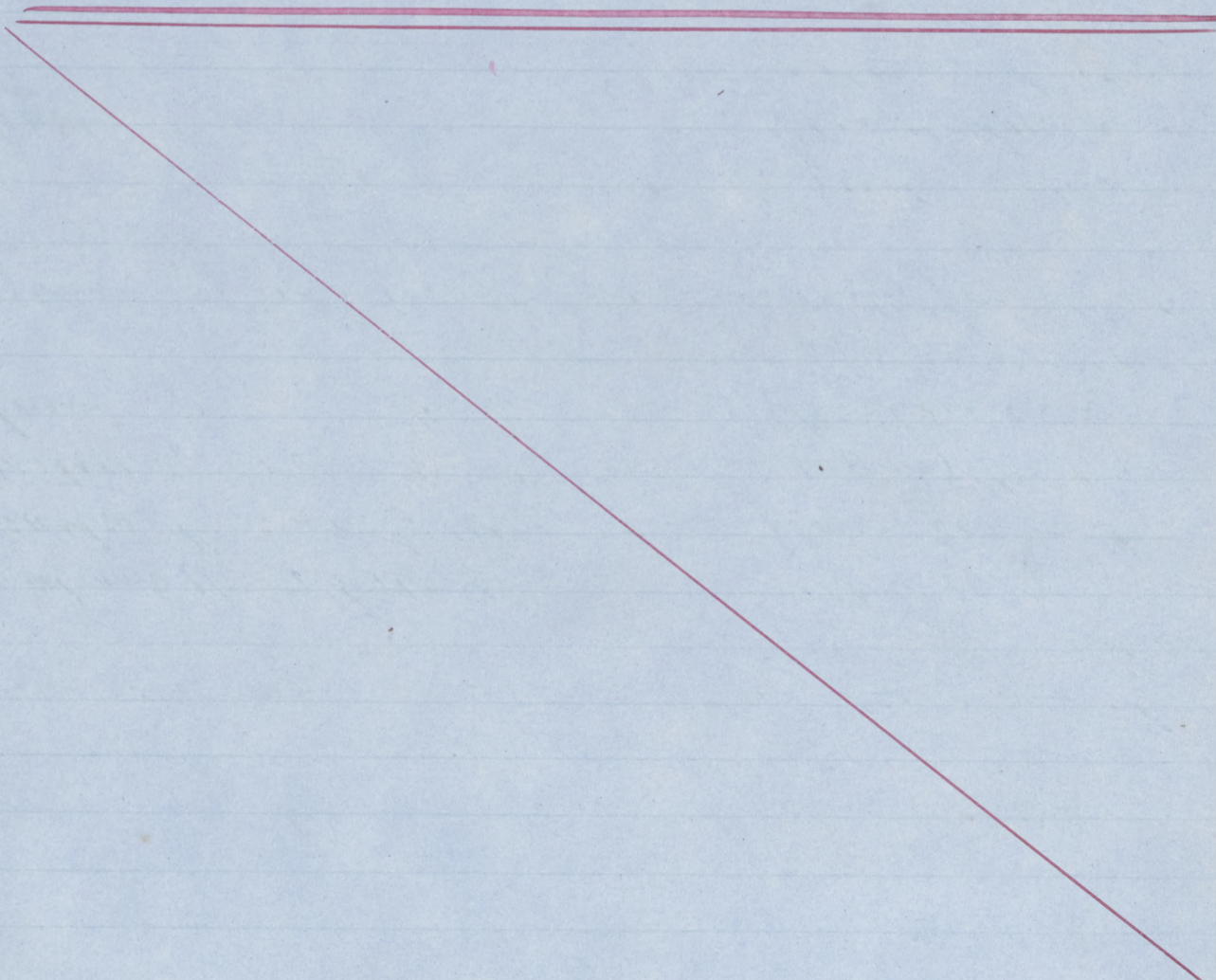
as to contract

which was made between Francisco Garcia and Don Francisco de las Casas to have completed the duties which the firm made to the latter of a part of the account for which he purchased and by the occupation of the land by him and Don Francisco Garcia having measured or assessed which he made the present proceeding cannot be valid from the payment of

that which he owes to Bon for although
 it may be true that he has not occurred
 the said in three years and by that
 account to the title he has lost his right
 it is also true that both the contracting
 parties having consented to the delivery
 and receipt without any amendment of the
 land returning null it was made
 the vendor's measure of that which
 he has acquired with just title and
 in this circumstance is bound to pay Bon

Pass
 This title Magistrate of San Jose that
 he may notify both parties returning
 all the papers to him in his office
 signed Malarin

Filed in Office September 11th 1837
 George Fisher
 Secretary



No. 617

11/21/37

Petition
57

To the Honorable Board of United States Land
Commissioners appointed to settle Private Land
Claims in California

The Petitioners of Juan
de Jesus Bernal Jose Antonio Bernal and
Juan Bernal of Castro respectfully sheweth

That
namely the 9th day of August A D 1839 Jose
Castro Prefect of the District of San Jose by
virtue of the authority inherent in the various
laws of Mexico then in force the Law usages
and customs of the Country affixing Grants
of land of California granted unto your Peti-
tioners the price of land,

And lands situated
East of the Pueblo of San Jose Guadalupe and
known by the name of Cañada de Palo
containing about two leagues as described
in the papers and maps relating to the same
the originals being in the possession,

Of your
Petitioners ready to be produced and shown
before your Honorable Board and your Peti-
tioners further shew that they have been
in the peaceful and quiet enjoyment
of said premises since the date of said
Grant up to the present time.

Entered by your
Petitioners occupying the said lands and
premises in person by other persons claim-
ing under your Petitioners cutting trees
the said lands to some extent and stocking
the same with hoes cattle and hogs all
of which is respectfully submitted for such
action as the nature and justice of the claim
may require

E. O. Crosby
Claimants Counsel

Filed in Office February 24th 1853

George Fisher
Secretary

Read in Volume of Petitions on pages 614
615

George Fisher
Secretary

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Depo of
A. M. Pico
52

Office of the Board of Commissioners
of California Land Claims

San Francisco August 13th 1853

This day before Commissioner Phelps Fitch
one of the United States Commissioners to ascertain
and settle Private Land Claims in Cal-
ifornia came Antonio Maria Pico a witness
in behalf of claimants Jose de Jesus Bernal
et al number 67 in the Doct of said Com-
missioners and being duly sworn deposed as
follows

Question by Mr Crosby
attorney for claimants

Question What are your
name age and place of residence

Answer My name is Antonio
Maria Pico my age forty three years and I
reside at San Jose in the county of Santa
Clara in the State of California

Question Look in the paper
now shown to you marked Exhibit number
with the initials A. F. pertaining from the
persons named Bernal and a deere of Jose
Leandro Prefit of the first District then
and dated in the year 1839 which documents
are annexed to this deposition and say whether
you recognize as genuine all or any of the
Signatures appearing therein

Answer I recognize and
genuine the Signatures of Jose Dolores Bernal
and Jose Maria Lecanillas appearing
therein Have seen them all write and know
their Signatures well

Question Did these individuals
exercise any Official functions in the year
1839 and if so what

Answer Jose Leandro was
acting as Prefit and said Lecanillas was
his Secretary Dolores Bernal was governor of
the Peace

Question Do you know the
land described in the documents above
mentioned if you do and how was it
first occupied and by whom

asson from the place it is
separated rather more than a league and about
Customs from San Jose it is a small tract
The
Bands have always occupied the land since
since it was granted to them to the present time
they have large houses of adobe upon it which
are occupied with their families

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PAGE 50

San houses
three five or six years ago they had enclosed
the land with cattle and they cut out the
families

Antonio Maura Pic
Mr Graham associate San agent
was present at the taking of this
deposition but declined to
propound any questions to the witness

The testimony
was given in the Spanish language Mr
Graham by consent of parties acting as
interpreter Juan and Subscribed before me
at San Francisco this 13th day of August
A D 1833

Alfonso Fitch
Commissioner

Filed in Office August 13th 1833

George Fisher

Secretary

Records in Volume B. Volume 3 Page 47

George Fisher

Secretary

Depo of
Jose Castro

United States Land Commissioner

San Francisco November 8. 1834

On this day before Commissioner Alfonso
Fitch came Jose Castro a witness on behalf
of the claimants Jose de Jesus Bernal
et al Case Number 107 and after being
adversely deposed as follows his evidence
being introduced by the Indenture of the Board
Testified by Mr Bernal by attorney
for claimants

Question Please state your
name age and place of residence
Answer My name is Jose Castro

My age forty six years and reside at Monterey
California

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2^d Witness Please look at the
document you have presented to you and
numbered Exhibit Number with the ini-
-tials A F heretofore filed in this case and
State witness you are acquainted with the
hand writing of Jose Castro

José Maria Leu-
-arrillas and Dolores Padua and if you witness
the signatures appearing as theirs in said
document all the time and genuine signatures
- answer I have examined said
document and I am acquainted with the
hand writing of the persons named the
signatures in said document all the time
and genuine signatures that of Jose Castro
is my own

3^d Witness What occurs if any
- and said persons hold at the date of the in-
- strument signed by them

answer I was Prefect of the
first District when signing the same which
was at the time the instrument bears date
- Covarrillas was Secretary of said Prefecture
and
Padua was Alcalde at that time the land
described in said document is situated
within what was then the jurisdiction of
said Prefecture and said Alcalde

Witness by Mr Blainding
Associate Law Agent

4th Witness What knowledge
have you of the handwriting of Jose Maria
Leuarrillas and Dolores Padua

answer They are subaltern
officers in my Prefecture and I often receive
official communications from them I have
- seen both of them write often and have received
private letters from them

José Castro
subscribed and sworn to before me this 8th day
of November 1834 Alfilonso Felch Commissioner
Filed in Office Number 8th 1834

George Foster Secretary

3/6/7

55-

Records in Evidence B. Volume 3P 625
George Fisher
Secretary

Depo. of
A. M. Pico

San Francisco March 26th 1853

On this day before Commissioner Delano's
Hall came Antonio Maria Pico and others
in behalf of the claimants Jose de Jesus
Bernal et al and was orally sworn his
evidence being interrupted by the Secretary

The United States associate
Law Agent was present

Witness to inquiris

by the counsel for the claimants the
witness testified as follows

My name is Antonio

Maria Pico my age is forty four years and
I reside at San Jose

When the Rancho called

La Linda del Palo is situated in the country
of Santa Clara about three leagues to the west
of San Jose

I have known it ever since the
year 1835 during all which time it has
been in the occupation of the Bernal family
Jose de Jesus Bernal and Juan Bernal just
occupied it Jose Antonio Bernal is brother
of the two former and he was occupying with
them

They have occupied from that time
to the present they had at first a small
house in which they lived and afterwards
built a larger and better one have raised
cattle sheep and hives and have cultivated
portions of the land

Question by the associate
Law Agent Do you know that the Prefect
possessed any power by the Laws of Mexico to
grant lands in California

Answer by the Law of 1837 the

Prefect had authority to grant lands with
- in the common lands of Towns

Question by counsel for the
claimants Was it customary for Prefects to
make such grants

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under the was Customary for them
to grant lands within the Episcopos common
lands of the town of San Francisco and the
and give least to the Prefect to make grants
as was told beyond the limits of the town
Francisco least to the Prefect
Antonio Maria Pico
San Francisco

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Before me
Beland Hall
Commissioner
Field in Office March 26th 1853
George Fisher
Secretary
Records in Auditor B. Vol 2 Page 662
George Fisher
Secretary

Depo of
A. Chaboya

United States Land Commissioner
San Francisco November 8, 1854
Antonio Chaboya a witness in
behalf of the claimants Jose de Jesus
Bernal and Jose Bernal by 17th after
being duly sworn depose as follows his
Audience being interrupted by the Intervenor
for said Board
In witness by my truly attorney
for claimants

I must please state your
name age and place of residence
Antonio Chaboya is Antonio
Chaboya my age is fifty one years and I
reside near the Pueblo of San Jose in Cal
I must do you know the Rancho called Laurencia
de la Pata Blanca in this case of Jose Bernal
is situated where Jose Bernal's occupation
and by whom
under the said Rancho this situated San Antonio
Blanca County against my own Rancho which is named
Matabuna this Rancho has been occupied by
Rancho Laurencia de Pata Blanca to be occupied
it was occupied by Jose de Jesus Bernal
Bernal and Juan Bernal least to
England at the time of the said head of cattle

57

On the place above of Means we found a house which was built of stone and mortar they lived in the house and had a small piece of land, we did not see any cuttings

They have continued to live there and occupy the place until the present time and have planted and cultivated every year

3 Question What are the boundaries of said Rancho

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PAGE 54

Answer The boundary on the north side of the Rancho is the western boundary of said Rancho del Palmar the south side it is bounded by the Rancho of dead Means

On the East the Loma del Palo Seco is the boundary and on the north the arroyo de Loma del Palo Seco which runs into the arroyo del Aguaje

This arroyo continues about the center of the Loma del Palo Seco and runs west emptying into the arroyo del Aguaje near the north western corner of the Rancho

Question by Mr. Blanning associate San Agent

Question How are the boundaries between the Rancho in question and that of Avellan Rancho

Answer There is a thick oak in the channel partly between the Rancho and the line at or near the north eastern corner of the Rancho

There is also an oak tree on this line marked with a cross which is at the south western corner of the Rancho and also stands in the line of my Rancho

2 Question State the general form of the Rancho and the dimensions

Answer It is all one and is longer than it is wide from East to West which is from my Rancho to the Loma del Palo Seco it is about 3 leagues and three quarters and from north to South it is about two leagues and a half

Antonio M. Cruz
Rancho

58

Subscribed and sworn to before me
on this eighth day of November
1854

Alphus Field
Commissioner

Filed in Office Number 8th 1854

George Fisher
Secretary

Records in Bureau B. Vol 3 Page 601

George Fisher
Secretary

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Depo of
J. Noriega

United States of America 3
State of California ss 3

San Francisco November 9, 1854

This day came before Peter Los Alamitos
protesting testimony to be used before the Board
of United States Land Commissioners
in said State

José Noriega witness on
behalf of the claimant José Manuel
Peralta in case number 17 in the docket
of said Board and said protest being duly
sworn upon in Spanish which was inter-
preted by the interpreter to said Board as
follows

The United States Land agent
is present

Testifies by Col. Crosby Esq
attorney for claimant

Question What is your name
age and residence

Answer My name is José Nor-
iega my age fifty four years my residence in Santa
Clara County California

Question Do you know the
Rancho of Encina del Palo Blanco in this
case if you state where it is situated and
what you know of its occupation
Answer I know said Rancho it is situated
in Santa Clara County about four leagues East
of the Pueblo of San José This comprising the
Ranchos of Auto Abrego + J. Requena the Rancho of Encina
del Palo in 1839 was occupied by Juan Ber-
nal at least José Manuel at least

59

3/6/74

and Antonio Bernal de la Cruz I saw them
on said Rancho their building and adobe
house and a corral

I saw them put on the
place two hundred heads of cattle other animals
abundant of mares and some other horses besides
they had a field enclosed and were cultivating

It was then planted in corn beans wheat
and barley the said Bernal de la Cruz was living
there at the time with large families these
families have continued from that time to the
present to reside in occupy and cultivate said
Rancho

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Cross Examined by me I Associ-
ate Law Agent

1 Question How far have you
resided from said Rancho and when and how
often have you visited it

Answer I have lived at San
Jose and have been in the habit of visiting
said Rancho as aforesaid I have struck in
the ground a number of silver veins
I may say with safety

2 Question What marks
the boundaries between this Rancho and
that of Segura and that of Alatorre

Answer It is divided from
both of these Ranchos by a mountain the
top of which is the boundary it is called
Serra Madre

Jose Noriega
Subscribed and sworn to before me

on this 9th
day of November A.D. 1834

Peter Lott
Commissioner

Filed in Office November 10th 1834

George Fisher
Secretary

Record in Auditor B. Vol 5 Page 630
George Fisher
Secretary

Depo of
J. A. Forbes
60

United States Land Commission

San Francisco Dec 28th 1834

On this day before me Commissioner of the
Pelch came James Alexander Forbes a witness
in behalf of the claimants Jose de Jesus Bernal
in lease No 617 who after being duly sworn deposed
as follows

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Questions by Mr Crosby attor
- my for claimants

1 Question Please state your
name and place of residence

Answer My name is James
Alexander Forbes my age is forty nine years
and I reside at Santa Clara in California

2 Question Look on the maps
now produced to your readers Exhibit No 1
with the initials A F and attached to the
deposition and state if you know what made
said map at what time or was made
for whom and what lands it represents

Answer This is a sketch or
representation of the lands called Laguna
de Pala situated in the County of Santa
Clara and in the Northern District of Cal
ifornia

It was made before in the summer
of 1839 at the request of the three brothers
Jose Antonio and Juan Bernal upon the
ground and went over and made a rough
examination and measurement of it

Heard
also been intimately acquainted with the
place for many years before this admission
of that tract of land is sufficiently correct
to render its identification easy

It contains
just about the quantity stated for in the
Petition to the Surveyor in which the grant
was made I believe that I wrote the Petition
myself the brothers also named themselves
as some of said land when I made the measu
rement and maps and have been in possession since
they had then a usual custom the land + one of them
was the case at the present time this map was
made for the purpose of being presented

61

to the Commission with the Petition further Grant
Questions by Mr. Boarding asso-
ciate Law Agent

Question What is the form
and extent the Commission of the Rancho

answer It is along narrow
Valley bounded on the East by a high ridge
of Mountains which is the commencement of

the main range of Mountains dividing the
San Joaquin Valley from that of Santa Clara

and on the west by a range of high hills
which divide it from the Rancho called Pala

on the
north it is also divided by a range of high
hills one of which is a round hill which

called the Pinos on the south its narrowest
point is a gorge between the Mountains entering

into the Valley of San Felipe at the south
The
Rancho is about two leagues or two and a half
long and about one league wide the valley

itself is level land small being very nar-
row and not more than four to six hundred

yards wide
and its utmost length about one
league this stretch includes also the side

hills as well as the Valley
Gas Alon Forbus

Subscribed and sworn
to before me on this 28th

day of December 1854
Alphonis Felch
Commissioner

Filed in Office December 28th 1854
Guy E. Fisher
Secretary

Record in Auditor's Volume Page 23
Guy E. Fisher
Secretary

Record in Auditor's Volume Page 23
Guy E. Fisher
Secretary

221 ND
PAGE 58

De po of
J. B. Alvarado

Monte's plates of America State of California 883
San Francisco Jan'y 19. 1853

This day came before Peter Sott a Commissioner
for taking testimony to be used before the Board of

United States Land Commissioners in said
State Juan B. Alvarado authentic and lawful
of the claimants pseudo Jesus Bernal et al
in lease number 67 of the 10th of said
Board)

and said letters being by some
in Spanish and said which was introduced
by the interpreter to said Board as follows

Wass Brannin by the United
States Law Agent who was present

Questions by Mr. B. for
claimants

1. Question what is your name
age and residence

Answer My name is Juan
B. Alvarado my age forty five years my res-
idence Santa Clara County in California

2. Question What offices have
you held in California under the Mexican
Government

Answer I was Secretary of the
Tribunal Junta about 1827 was a member
of said Junta in 1834

I was an Officer in
the custom House at Monterey in 1835 I
was Political Chief of California in 1837
and 1838 and in 1839 and from that time till
1842 inclusive I was Commissioner of the Department

In
1843 I was Colonel of Militia in 1845 I was
Deputy to the Mexican Congress and have
had various public employments which
I do not now remember

3. Question Look at the
document now shown to you marked A. P. L.
as an exhibit to this deposition and state whe-
ther you are acquainted with the
writing of Jose Castro

Do not Pa. does and
Jose Maria Covarrubias if you state your names
of knowledge and also whether the signatures
respectively of Alvarado and said document are genuine

Answer I am acquainted
with the handwriting of these persons and
have seen them all write and sign their names

and likewise their respective signatures on the
 said plans when they occur in this document
 to be genuine

1 I further state what right
 or title if any did the grantees (names) in
 said document derive under and by virtue of
 said document by the laws and usage of the
 Mexican Government

answer That Prefectures were
 established during my administration
 as Governor General and under conferring auth-
 - ity of the Prefect of the first District

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To grant
 lands in the neighborhood of settlements or
 Pueblos for least was Prefect of the first Dis-
 - trict at the time that this document bears
 date

and was clothed with the authority and
 the rights acquired by the grantees (names)
 in the same under this document as they
 would be had, the Governor of the Depart-
 - ment made the grant

was examined by the
 United States associate Land Agent

Further under what
 Law were the Prefects authorized to grant
 lands

answer The Law of regulations
 (Ley Reglamentaria) of 1837 under stands
 as authorizing Prefects to grant common lands
 of the Pueblos

2 Further Was this power
 of the Prefect dependent upon the consent
 or delegation of the Governor

answer That Law of 1837
 conferred the power upon the Prefect inde-
 - pendent of the Governor

So far as related to
 the common lands of Pueblos but beyond that
 the Prefect could only grant with the consent
 and approval of the Governor

3 Further Was the order
 you made as Governor authorizing the Prefect
 of the first District to make grants a written
 or verbal order

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answer I remember to have ordered
the Secretary to dispatch such an order directing
to said Prefect

State for granted (my name to the
Secretary was obeyed) though he never showed me
the name

It was not customary for the German
to sign such communications they were signed
by the Secretary

From B. Alvarado
Subsidiary and Ann to be here are
in this 19th day of January
A D 1833

Peter Lott
Commissioner

Filed in Office January 23rd 1853
George Fisher
Secretary

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8/17+

65
Translation
Expediente
Exhibit
B

There is no stamped Paper
Señor Prefect José de Jesús Bernal José Antonio
Bernal and Juan Bernal and latter natives
of this country

We present ourselves before you
Excelling with due respect and say that
we are owners of two hundred heads of large
cattle and about of manns

and desiring to per-
ceive the permission and vicarious of those lands
we beg your Excellency may be pleased
to grant us a small piece of land situated
East of the Pueblo of San José de Guadalupe
and known by the name of Cañada de Palu

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and
as appears by the annexed plan is only 8000
varas in breadth and scanty 2000 in its greatest
length

This land belongs to no particular
corporation or mission, which we respectfully
- pray that you may deign to grant
us in our petition by which we shall receive
favor &c

Pueblo of San José de Guadalupe April
25th 1839

José de Jesús Bernal &
José Antonio Bernal &
Juan Bernal y Castro &

Marquial decree
Pueblo of San Juan de las
- to August 8th 1839

Let the justice of the Peace
of the Pueblo of San José de Alcarado give
information of the Petitions in this instance

And
observed the legal requisites to be attended
to if the lands petitioned for belong to the pro-
- perty of any corporation Pueblo or mission and if
it can be granted to them in propriety.
Castro

Señor Prefect
In fulfillment of the preceding
decree of your Excellency I have the honor
to inform that the Petitions in this

distance here observed that the legal requisites
to be attended to

That the land being petitioned
for is found to be vacant

That it is the property

of some individual and can be granted
in fee

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Pueblo of San Jose of Alvarado August
9th 1839

John Paulus

Pueblo of San Juan de los Rios August 10th
1839

In view of the representation bearing
this expedite the confirmation of the petition
of the Peace of the Pueblo of San Jose of
Alvarado

and of the other matters which sur-
round and there appearing to be no one oppo-
sing the possession and property of the
land prayed for

The interested parties may
go before the respective judge that he may
give them judicial possession in virtue of
this decree

By whom the boundaries shall
be marked out

Let Record be made of this
now in the respective book

and presenting
the title to the petitioners for their acknowledgment
to them for their petition and other
things

The Sr. D. J. de la Cruz Prefect of the
first district thus gave a license and signs
which I attest

J. de la Cruz

Jose Maria Levarrubin

Secretary

Let Record be taken in the respective Book
Levarrubin

Filed in Office Feb 24. 1853

George Fisher

Secretary

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No 282

Opinion of the Board

John Roland and J. L. Hornsby vs The United States

This is a claim for nine square leagues of land purporting to be the vacant or surplus lands of the plains called Las Animas and the Rancho de Pala and embracing the lands of the Cur Colorado (Red Mountain)

221 ND PAGE 64

The Petitioners claim to derive their title from a grant made by Maximilian Pio Pico to Don Juan de los Rios on the 10th day of May 1846 a true copy of an Espediente from the archives of the Mexican Government in California now in the custody of the United States Surveyor General duly certified is filed in the case

It appears from this document that the Granters presented their Petition to the Government for the Grant on the 5th day of May 1846 in the next day that Office without so far as appears from the Record making any inquiries or investigations in relation to the matter entered a decree of Concession and directed the title to be issued and delivered to the interested parties

There is no evidence that the Grant was ever approved by the Departmental Assembly or that judicial possession was ever given nor is it shown that the Granters ever were in possession of the land or occupied it in any manner The lands as described in the Grant situated in the vacant or surplus lands of the plain called Las Animas and of the Rancho de Pala in the jurisdiction of the Pueblo of San Jose Guadalupe

Belonging to Don Carlos Weber and Jose de Jesus Bernal embracing the lands of the Cur Colorado (Red Mountain) the upslope of the Valley until the full number of nine leagues is made up

a stipulation is filed in the case by which it is agreed between the Claimants and the United States Law Agent that the evidence taken and the papers filed in

Cases Number 333 Charles M Weber claimant
and Number 617 Jose de Jesus Bernal et al cla-
-imants except ~~Maria~~ Connyamus and testimony taken
to prove such Connyamus shall be considered as taken
and filed, in this case and from part of the record
therein

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A careful examination of these files affords
no aid to the description contained in the grant there
is nothing in them to show that there is any so-
-brants or surplus contained within the limits of
them claimant if there was in what part of them it
is situated

There is there any proof of the existence
or position of the Mountain called Curo Leonado
we are therefore left to the description in the grant
above for the true location and position of the land
and it is too vague and indefinite to enable us to
describe them into any degree of certainty

But
even if this difficulty was obviated the absence
of any evidence of the proper name of the conditions
which according to the rules laid down by the Board
is required in all cases of mineral grants in
donation made under the authority of the coloni-
-zation laws of Mexico would be fatal to a con-
-firmation of the claim

The application of the
Petitioner for a confirmation must therefore
be denied

Filed in Office November 21st 1854

George Fisher
Secretary

De cue

John Holland and
J. Hornsby vs
The United States } In this case where
it is adjudged by the Commission that the claim
of the Petitioner is not valid and it is therefore
and that his application for confirmation
thereof be denied

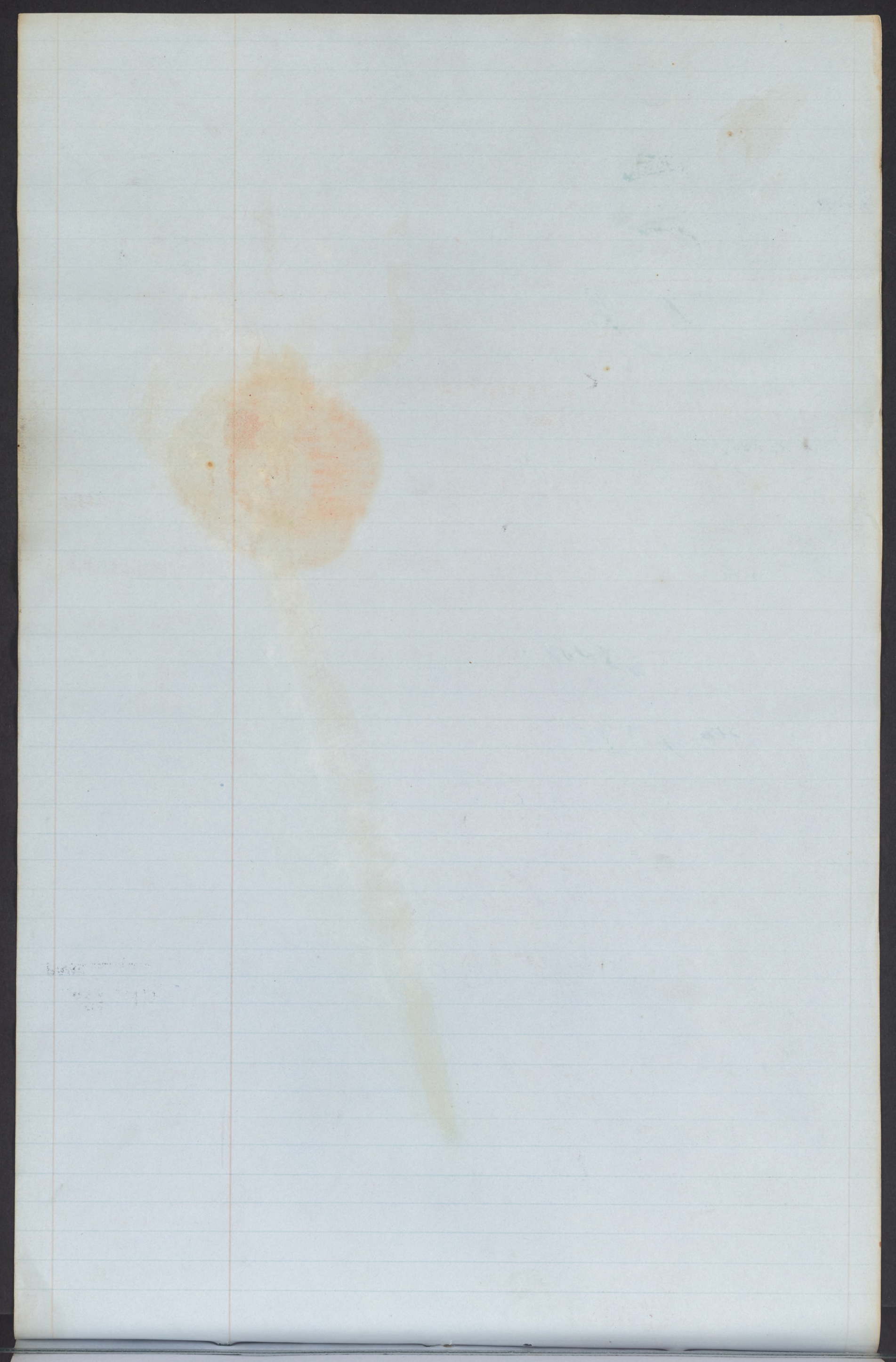
Alphius Welch
R. Aug. Thompson
S. B. Fannell
Commissioners

Filed in Office November 21st 1854 Geo Fisher Secy

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And in affirming to the satisfaction of
this Board that the land hereby adjudi-
cated 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 fur-
nished be made out and duly certified by
the Secretary in 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.

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J. 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 *Sixty nine* pages, numbered from
1 to *69*, both inclusive, to contain a true, correct and full Tran-
script of the Record of the Proceedings and of the Decision of the
said Board, of the Documentary Evidence and of the Testimony
of the Witnesses, upon which the same is founded, on file in this
Office, in Case No. *282* on the Docket of the said Board,
wherein *John Roland, et al,* are
the Claimant, against the United States, for the place known by
the name of "*Los Huercos*"

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

Geo. Fisher

U. S. DISTRICT COURT,

Northern District of California.

No.

~~221~~ 221

THE UNITED STATES,

MD

vs.

John Roland, et al.

TRANSCRIPT OF THE RECORD

FROM THE

BOARD OF U. S. LAND COMMISSIONERS,

In Case No.

282

Filed,

June 20 1855,

J. M. C. Monroe,
Clk.

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

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States,
vs
John Roland, et al.

No. 221.

In motion of A. P. Crittenden Esq. Counsel for the Claimants, the U.S. Dist. Attorney being present, and not objecting thereto, it is ordered by the Court that the submission herein be vacated, and that the said cause be placed on the trial docket for the purpose of allowing further evidence to be taken.

ap 5758

No 221

United States District Court, Northern
District of California.

The United States,

vs.

John Roland, et al.

Order vacating
Submission &c,

Filed April 5th 1858,

W. H. Cheney
CLERK.

DEPUTY.

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

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John Roland and } No 221 Dist. Court
J. L. Hornsby } No 282 Land Comm
" }
The United States }

It is stipulated and agreed that a copy of the deposition of Pio Pico taken in the case of John Roland vs The United States (No 103 Dist. Ct. No 282 Land Comm) may be filed in this case and shall be considered as taken herein, omitting therefrom however Questions and Answers Nos 8, 9, 10, 11, 14 + 15, and the documents therein referred to, the same having no connection with this case; and it is admitted that the paper referred to in Question and Answer 33 of the deposition of Pio Pico is the original of the Expediente of the grant to John Roland and Luis Arenas a copy of which appears in the transcript in this case

And it is further stipulated and

agreed that a copy of the deposition of Jose Mattias Moreno, taken in said Case of John Roland vs The United States (No 103 Dist. Ct + No 232 L. C.) may be filed in this Case and considered as taken herein; and it is admitted that the papers referred to in the said deposition in Questions and Answers 29 + 30, are the original decree of concession and grant or titulo, of which copies appear in the transcript in this Case.

And it is further stipulated and agreed that ^{a copy of} the deposition of Rufus C Hopkins taken in said Case of John Roland vs The United States (No 103 Dist. Ct No 232 L. C.) may be filed in this Case, and said deposition shall be considered as taken herein.

Jully R. Wise.

acting U.S. Dist. Atty

A P. Penttender

Atty for Claimants.

Feb 17/60

N^o 221.

U. S. District Court

John Roland et al
vs
The United States.

Stipulation —
admitting certain
depositions taken in
case N^o 103.

Filed Feb 17, 1860,
W. H. Chivers,
Clerk

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

The United States	}	No 221 Dist. Court
vs		No 282 Land Commr
John Roland & J. L. Hornsby		

It is stipulated and agreed that
the above entitled cause shall be con-
sidered in connection with the case
of the United States vs John Roland No
103 Dist. Court - the testimony in which,
given on either side, shall be considered
as given in this case - and that
in making up the transcript in this
case on appeal to the Supreme Court,
if such appeal be taken by either party,
any of the testimony or papers in said
Case No 103 shall be incorporated
therein which either party may
consider material and shall direct to
be so incorporated -

San Francisco, June 2^d. 1862 -

N. P. Cuttenden
Atty for Claimts -
W. H. Sharp, U. S. Atty
by Geo. P. Williams
atty in aid.

June 2/62

221

U. S. Dist Court

The United States

vs
No Roland et al

Stipulation
admitting testimony
in 103, etc.

Filed Aug: 5, 1862,

J. H. Cheever,
Clerk

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PAGE 73A.

The United States

100.

^N
John Roland

No. 221

ND

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The claimant in this case produces in support of his claim ~~the~~ ^{an} expediente from the archives and the original title or grant, referred to himself —

The expediente is composed of
1. a petition by Luis Armas &
John Roland soliciting "the vacant
& lands at the places called Las
& Ruinas and Cañada de Pala
& belonging to Don Carlos Toward
& José de Jesus Bernal including
& the lands of the Cerro Colorado
& towards the slope of the valley
& to the extent of 9 leagues" a
map of which they offer to present
at a convenient time

This petition is dated May 5. 1846
On the same day the Governor
by a marginal order directs the
decree of accession to be made
out and the title to issue
The decree of accession & the
formador or draft of the title

2

constitute the remainder of
the expediente - They are both
dated on the succeeding day
May 5th

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PAGE 74 A

The genuineness of these papers & of
the title produced by the
Claimant is not disputed by
the Counsel for the U. S.

It will be observed that the
petition was unaccompanied by
a diseno and that the dis-
cription of the land was vague
and loose -

No informers were asked for or in-
quiry made as to the condition
of the land or the qualifica-
tions of the parties -

The whole proceeding was se-
cured by (barricaded) within
two days.

No evidence has been offered
to show that either of the
grantees ever settled or attempt-
ed to settle on the land -

It does not even appear that
they ever visited it. Certainly
no diseno or map of it was produc-
ed as promised in their petition

3
nor is it shown that any
grant of the extent of 9 leagues
or indeed any grant whatever
exists showing the ranchos named
in the grant —

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The case is thus far in favor of
all equities — The claim rests
on the bare fact that the
Governor without examination
informs or investigation and
with no time for any other
law fit to sign a title paper
for a tract of land — supposed
to exist and that this
title paper has been claimed by
the parties without the performance
of a single ^{act} to assert their
title or perfect their rights.

Under the views originally enter-
tained by this Court a claim
of this kind would have been
unhesitatingly rejected for want
of occupation & settlement which
were considered essential to create
in the holder of an unapproved
grant any equities which the
U. S. was bound to respect —

Those views have ~~been~~ however
(over)

are understood to have
been overruled by the Supreme
Court in the case of Belmont
It was thus held that the
unapproved grant of the
Governor passed a vested
interest to the grantee.

~~It~~ That possession and occupation were not ~~in all cases~~ necessary to complete the title thus ~~conveyed~~ and that it would be ~~lost~~ forfeited in those cases only, where the grantee had so unreasonably delayed or neglected the performance of the conditions, as to justify the inference that he had abandoned his claim during the existence of the former government.

As the time allowed for settlement and occupation was usually one year it is evident that with respect to all the numerous grants made by Pío Pico towards the close of his career, ~~he~~ ^{unwillingly} ~~was~~ ^{rather} ~~unable~~ ^{to} ~~fulfill~~ ^{to} ~~the~~ ^{fulfill} ~~conditions~~ ^{the} ~~grantee~~ ^{the} ~~the~~ ^{time} that intervened between the dates of the grants, and the ~~could~~ ^{could not be excused} ~~not~~ ^{as justifying the inference of abandonment} ~~change~~ ^{of} ~~flag~~ ^{was} ~~not~~ ^{not} ~~capable~~ ^{to} ~~fulfill~~ ^{the} ~~the~~ ^{conditions} ~~as~~ ^{specified} ~~in~~ ⁱⁿ ~~the~~ ^{the} ~~grants~~ ^{grants} —

The excuses to which ~~was~~ ^{were} ~~recurred~~ ^{recurred} by the Supreme Court as sufficient ~~in~~ ⁱⁿ the hostility of Indians & the distressed state of ^{the} ~~the~~ ^{country} ~~country~~ ^{can} ~~be~~ ^{be} in almost all these cases

be urged with the same force
as in Remont's case -

It follows that with respect
to the late grants of Pio Pico
the neglect to comply with
the conditions can surely be
urged under the ruling in the
case of Remont be urged to
defeat the claim.

~~was understood to have been
reversed by the Supreme Court
in the case of *Illinois*. It
was the rule that the
Supreme approved parts of the
Governor's passed an act
to the practice, which would
be not only in ~~the~~ ~~of~~ ~~an~~ ~~act~~
~~of delay & neglect in fulfilling~~
~~the duties of his office~~
~~but also by his~~
~~right~~~~

See A

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PAGE 74 F

But It may be doubted whether
the Supreme Court will adhere
to the rule thus laid down
The later cases seem to justify
the inference that when the point
is again presented, the decision
it will ^{in the rule} in its free application
to ~~subsequent~~ ^{future} cases be given
important qualifications
Certainly the case at bar
meets the objections to its adop-
tion, in the strongest light -
But the case of *Chambers*
(20 Howard 59) appears in many
aspects analogous to that in
the case at bar
In that case great emphasis

5 was laid upon the fact that
no inquiries were asked for "nor
"any of the preliminary conditions
"complied with which enabled
"the Governor" to make the
grant" (p. 63) -

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PAGE 74 G

"The Court" it is declared "must
"look to the laws & regulations
"both for the power to make
"the grant & for the mode &
"manner of its exercise and
"they are to be substantially
"complied with except so far as
"modified by the usages & customs
"of the Government under which the
"titles are ~~are~~ derived the principle
"of equity & the decisions of this
"Court"

Much stress is also laid upon
the fact that "the grant was
"made so near the time when
"the Government of the Territory
"passed from his hands ^{the Governor's} and
"indeed during the very heat &
"struggle in which his power was
"overthrown"

The grant in that case was dated
May 23^d 1845. In this it is
dated May 5. 1845

The inquiry, ^{therefore} in these cases is not
This is not ~~therefore~~ merely an
inquiry whether the Governor
in fact signed & delivered a
paper purporting to be a grant
to a party on a particular
day but whether in so doing
he acted in the fair and reg-
ular exercise of his powers
and under the laws and reg-
ulations, and bona fide with
the bona fide intention of
carrying out their policy.

It is I think impossible that
the Governor in signing this
devising this title to issue
without informers or investigation
and on the very day the
petition was presented, for lands
vaguely described which the
parties had never occupied or
settled upon, could ever be
deemed to have so acted.
On the whole I think that
this claim is without merit
and should be rejected.

No. 221.

U. S. District Court.

The United States.

vs.

John Roland.

Opinion respecting
claim.

Filed May 12, 1863,

N. H. Chenevix,

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 13th day of May in the year of our Lord one thousand eight hundred and sixty-~~three~~

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States

v.

John Roland and J. L. Hornsby

No. 221

This cause came on to be heard on the appeal of the claimants from the final decision of the Board of Commissioners to ascertain and settle the private land claims in the State of California, under the Act of Congress approved March 3, 1857, upon the transcript of the proceedings and decision of said Board and upon the further evidence in this Court taken by order of the Court; and it appearing to the Court that the said transcript was duly filed according to law: Now therefore, the cause having been regularly brought to a hearing, counsel for the respective parties present and heard, and due deliberation had in the premises, It is ordered, adjudged and decreed that there is no error in the decree of the said Board and that the said decree be and the same hereby is affirmed, And it is further ordered adjudged and decreed that the claims of the

said Roland and Hornsby is invalid,
that the same be and hereby is rejected,
and that the petition of said claimants
for a confirmation be and the same
hereby is dismissed.

Cyden Hoffman
Dist. Judge

NO 221

UNITED STATES DISTRICT COURT

Northern District of California.

The United States

v.

John Roland et al

Demurrer rejecting claim

Filed May 13, 1863.

W. St. Chenevix,
Clerk.

May 14/63

At a stated term of the District Court of the United States of America for the District of California held at the Court Room in the City of San Francisco on Monday the 30th day of December in the year of our Lord, one thousand eight hundred and sixty seven.

Present, The Hon. Ogden Hoffman,
District Judge.

John Roland et al } District Court No. 221
vs } Land Commission No. 282.
The United States }

This day came the said claimants, by their attorney, and, on their application made in open Court, It is ordered by the Court that an appeal in behalf of said claimants from the final decision of this Court, rendered in this 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.

Ogden Hoffman
Dist Judge

Dec 30/67

221

U. S. Dist Ct
Dist of California

John Roland
et al

vs

The United States

Notice of appeal

Filed Dec 30th 1867

J. C. Whitney
at
by S. S. Smeally

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United States of America, SS.

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To the United States of America and also to Delos Lake, Esq. United States District Attorney, in and for the District of California, Greeting.

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, District of Columbia, on the first Monday of December next, pursuant to an appeal, (and an order of appeal,) taken and filed in the Clerk's office of the District Court of the United States, in and for the District of California on the 30th day of December 1867, in a certain land claim lately pending and determined in said District Court wherein John Roland et al were claimants for the place called "Los Hurcos", and are now appellants, and the United States is appellee, to wit, Case Number 221, which was appealed to said District Court from the decree of the United States Board of Land Commissioners, pursuant to the provisions of the Act of Congress, approved March third, 1857, entitled "An Act to ascertain and settle the private land claims in the State of California" to show cause if any there be, why the Judgment and Decree of said District Court so appealed from, rejecting the claim of the claimants therein, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Hon Salmon P.

Since a copy of mother
calendar received
this 3rd June 1868

June 9 1868

R. F. Morrison
Acting U.S. Atty

~~282~~
2021

W. W. H. C. P.

West End

J. W. S.

John W. S.
John W. S.
John W. S.

()

Richardson

with services

June 3rd 1868

W. W. H. C. P.

W. W. H. C. P.

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John W. S.
with services

Please, King Justice of the United States.

The President of the United States of America,

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

greeting:

Whereas, lately, in the District Court of the United States for the _____
District of California, before you,
in a cause between John Roland & J. L. Hornsby ap-
pellants, and The United States appellees,
wherein the decree of the said District Court,
entered in said cause, on the 13th day of
May A.D. 1863, was in favor of the said ap-
pellees and against the said appellants
John Roland and J. L. Hornsby.

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 ~~seventy-six~~ ^{seventy-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 it is further ordered that this cause be, and the same is hereby remanded to the said District Court with directions to enter a decree confirming the claim of the petitioners.
21st Nov. 1870.

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You, therefore, are hereby commanded that such *further* proceedings be had in said cause, *in conformity to the opinion & decree of this court* 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 ~~eighty~~ *sixty-nine*.

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

Issued by

Geo. Middleton

Clerk of the Supreme Court of the United States.

221

No. 204, December Term, 1869

MANDATE
 SUPREME COURT UNITED STATES.

Issued as: D.C.

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*Filed in open Court this
 16th day of January 1871
 on motion of Messrs Patterson
 & Son of Counsel for claimants
 Geo W & C. H. Clark
 By A. H. Finwood
 C. H.*

SUPREME COURT OF THE UNITED STATES.

No. 204.—DECEMBER TERM, 1869.

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John Roland and J. L. Hornsby, Appellants,
vs.
The United States. } Appeal from the District Court of the United States for the District of California.

Mr. Justice FIELD delivered the opinion of the Court.

As we have had occasion to observe in several instances,* grants of the public domain of Mexico, made by governors of the department of California, were of three kinds: 1st, grants by specific boundaries, where the donee was entitled to the entire tract described; 2d, grants by quantity, as of one or more leagues situated at some designated place, or within a larger tract described by out-boundaries, where the donee was entitled out of the general tract only to the quantity specified; and 3d, grants of places by name, where the donee was entitled to the tract named according to the limits, as shown by its settlement and possession, or other competent evidence.

The greater number of the grants, which have come before this court for examination, have belonged to the second class. They have usually designated the land ceded by the general name of the valley or locality where situated, with a clause annexed that the concession was limited to the specific quantity mentioned, and that the magistrate of the vicinage, of whom possession was to be solicited, should cause the same to be surveyed, and that any surplus existing should be reserved for the use of the nation.

When the first grant of this kind was presented for the consideration of this court, in the Fremont case,† which was for ten leagues within a tract of much greater extent, it was objected that the grant was void for uncertainty of description, and that no interest passed to the grantee until the quantity was surveyed and severed by known boundaries from the public domain; but the court held the objection untenable, and that, as between the government and the grantee, the latter had a vested interest in the quantity of land mentioned. "The right to so much land," said the Chief Justice in delivering the opinion of the court, "to be afterwards laid off by official authority in the territory described, passed from the government to him by the execution of the instrument granting it." And in support of the principle asserted the court cited the case of Rutherford vs. Greene's Heirs, reported in 2d Wheaton,‡ which arose upon an act of the State of North Carolina, passed in 1782, providing that twenty-five thousand acres of land should be allotted and given to General Greene and his heirs, within the bounds of a tract reserved for the use of the army, to be laid off by commissioners appointed for that purpose. The commissioners in pursuance of the act allotted the twenty-five thousand acres, and caused the quantity to be surveyed off, and the survey to be returned to the proper office, and the question, upon which the case turned, related to the validity of the title of General Greene and the date at which it commenced. The court held that the general gift of twenty-five thousand acres lying in the territory reserved, became by the survey a particular gift of the quantity within the survey, and concluded an elaborate examination of the title by stating, that it was the clear and unanimous opinion of the court, that the act of 1782 vested a title in General Greene to the twenty-five thousand acres to be laid off within the boundaries designated, and that the survey, made in pursuance of the act, gave precision to that title, and attached it to the land surveyed.

And this court, in deciding the Fremont case, observed in reference to this case of Rutherford vs. Greene's Heirs, that "it recognizes as a general principle of justice and municipal law, that such a grant for a certain quantity of land by the government, to be afterwards surveyed and laid off within a certain territory, vests in the grantee a present and immediate interest. In the language of the court, the general gift becomes a particular gift when the survey is made; and when this doctrine has been asserted in this court, upon the general principles which courts

*Higuera vs. The United States, 5 Wall., 828; Alviso vs. The United States, 8 Wall., 339.

†17 How., 542, 558.

‡P. 196.

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of justice apply to such grants from the public to an individual, good faith requires that the same doctrine should be applied to grants made by the Mexican government, where a controversy arises between the United States and the Mexican grantee."*

Under Mexico the measurement and segregation from the public domain of the quantity, specified in this class of grants, could only be made by the officers of the government. A measurement by the grantee was inoperative for any purpose. Although a general possession of the land ceded was permitted in California before the official measurement, the grantee acquired by such possession no absolute right to the tract occupied, or any interest which could control the action of the officers of the government in the segregation of the land. A private survey was as ineffectual under the former government as under the present government. The right which the former government reserved to itself over the survey passed, with all other public rights, to the United States upon the cession of the country, and is now to be exercised in pursuance of their laws.†

Now, if we consider the present case in the light of these views, we shall find little difficulty in its disposition. The grant here, like the one in the Fremont case, is a grant by quantity. It was made under the same law and regulations, and like that, was subject to the approval of the departmental assembly, and has certain conditions annexed. It was issued to Luis Arenas and John Roland on the sixth of May, 1846, by the then governor of California. A petition for the land had been presented by them to him on the fifth of May, and the governor made an order on its margin directing a decree of concession, and the issue of a grant to the parties. On the subsequent day, the sixth, a formal decree was signed by him declaring the petitioners owners of the land, and directing a grant to be issued, which would secure to them the property. The grant followed. The petition, the marginal order, the decree of concession, and the draft of the grant, are in the Mexican archives now in the custody of the Surveyor General of the United States for California. Traced copies of these instruments, and the original grant issued, were produced by the claimants before the land commissioner and in the district court. Their genuineness and authenticity were not disputed in either tribunal. The issue of the grant by the governor was admitted in the written stipulation of the counsel of the government.

Several years previous to the issue of this grant to Roland and Arenas, a grant of two square leagues in the place called Las Animas had been made to one Thomas Brown, from whom the property by various mesne conveyances had passed to one Charles Weaver; and a grant of about the same quantity in the place called Canada de Pala had been made to Jose Bernal and others. For the surplus land remaining in these places, after satisfying the previous grants, including lands of the Cerro Colorado within the jurisdiction of the same pueblo, to make up the amount of nine leagues, the petition of Roland and Arenas was presented, and the grant to them was issued. No map of the land solicited accompanied the petition, but the petitioners offered to furnish a map to the governor at a convenient time, that is, whenever there might be occasion for its use.

The grant, after reciting the petition, and that the necessary steps had been taken and inquiries made, proceeds to state that the governor, by a decree of that day, in the exercise of the powers with which he was invested by the supreme government, and in the name of the Mexican nation, had declared and did declare the parties owners in full property of the land solicited, describing it as in the petition, in conformity with the law of 1824 and the regulations of 1828, subject to the approval of the departmental assembly and certain conditions annexed.

The instrument purports on its face to transfer a full title to the property solicited. If valid when issued, it passed, according to the decision in the Fremont case, to the grantees a present and immediate interest in the quantity of land specified, to be subsequently laid off by official authority. And this brings us to the questions, whether there was anything in the action of the governor or of the grantees previous to its issue, which impaired its validity; and if the instrument was valid when issued, whether there was any such subsequent disregard of its conditions as to work its forfeiture.

That the governor, under Mexico, was authorized to make grants of land in the department of California is not questioned; and that the instrument produced in this case is genuine and was issued by him is ad-

*17 How., 559.

†17 How., 565.

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mitted. But it is said that the grantees did not accompany their petition with a map of the land solicited, and that the governor did not make any inquiries as to the qualifications of the petitioners, and the condition of the land, as required by the regulations of 1828, which were adopted to carry into effect the colonization law of 1824.*

It is true that the regulations provided that a map of the land solicited should accompany the petition, but a compliance with the provision was not exacted in all cases. The governors exercised a discretionary power of dispensing with it under special circumstances. No motive existed for insisting upon its presentation when the information, which it was designed to impart, was already in the public archives open to the inspection of the governor; and such information existed there in the present case. At any rate, the governor was satisfied with the offer of the petitioners to furnish a map at the proper time subsequently. As was said in the Fremont case, in answer to an objection of a similar character, "this court could not, without doing injustice to individuals, give to the Mexican laws a more narrow and strict construction than they received from the Mexican authorities who were intrusted with their execution."*

It is also true that the regulations provided that the governor, upon receiving a petition for land, should proceed to obtain the necessary information as to the qualifications of the petitioner and the character of the land. But they did not prescribe any particular mode by which this information should be acquired. It might have been obtained by the governor from his own investigations, or he might, as stated in the regulations, if that course were preferred, consult the appropriate municipal authority, which was that of the district, whether any objection existed to making the grant. In some instances, as in the case of Sutter, the character of the petitioner, and of the land solicited, were matters of general notoriety.† The objection appears to proceed upon the idea that a formal reference to the local magistrate, and a report from him, were essential to give the information required. This course was usually adopted, but it was not essential. The grant in the case recites that the necessary steps had been taken, and inquiries made, and something more than mere surmises at this day are necessary to show that the recital is false.‡

There is nothing in these objections which touches the validity of the instrument at the time it issued. And the clause subjecting the grant to the approval of the departmental assembly did not prevent the title from passing to the grantees upon the execution of the instrument. Such approval was not a condition precedent to the vesting of the title. According to the regulations of 1828 the authority to make grants of land in California was lodged solely with the governor. It was not shared by him with the assembly. That body only possessed the power to approve or disapprove of grants made by him. Until such approval the estate granted was subject to be defeated. With such approval the grant became, as it was termed in the regulations, "definitively valid," that is, it ceased to be defeasible, and the estate was no longer liable to be divested, except by proceedings for breach of its other conditions.

Besides it was the duty of the governor, and not of the grantee, to submit to the assembly grants issued by him for their approbation. His neglect in this respect suspended the definitive validity, as it was termed, of the grants; that is, it prolonged the liability of the estate to be defeated by the action of the assembly, and of the supreme government thereon, to which the matter was referred in case the approval of the assembly was not obtained; and no other consequence followed. His neglect was not permitted to operate to divest the grantees of the estate already vested in them.§ In many instances years elapsed before the approval was obtained, although the grantees were in the meantime in the possession and enjoyment of the property; and in many instances no approval was had previous to the conquest.

The grant being valid at the time of its issue, has there been any such disregard of the conditions annexed as to work its forfeiture? The objection taken is that the grantees never applied to the proper magistrate for official delivery of possession, as provided in the second condition; and that they never entered upon the land. The objection applies only to the period intervening between the date of the grant, and the time when the country passed under the jurisdiction of the United States. The question is, what right did the grantees acquire in the land from the

*17 How., 561.

† U. S. vs. Sutter, 21 How., 172. The Sutter case, 2 Wallace, 563.

‡ U. S. vs. Johnson, 1 Wall., 329.

§ U. S. vs. Reading, 18 How., 4; U. S. vs. Vaca, *Ibid.*, 596; U. S. vs. Larkin, *Ibid.*, 558; U. S. vs. Cruz Cervantes, 18 H., 553; U. S. vs. Johnson, 1 Wallace, 329.

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Mexican authorities. The court cannot inquire into any acts or omissions by them since those authorities were displaced. It is not authorized to pronounce a forfeiture for anything done, or anything omitted by them since that period. Now the military forces of the United States took possession of Monterey, an important town of California, on the 7th of July, 1846, and within a few weeks afterwards occupied the principal portions of the country; and this occupation continued until the treaty of peace. On that date, therefore, the authority and jurisdiction of Mexican officials are considered as having terminated. The political department of the government, at least, has designated that day as the period when the conquest of California was completed, and the judiciary in this respect follows the action of the political department.—(U. S. vs Yorba, 1 Wall., 423.)

Between the date of the grant under consideration, and the period thus designated, only sixty-one days elapsed. There are very few instances of grants in California where a juridical possession was delivered to the grantees within a period as limited as this after their issue. In many instances years elapsed before this proceeding was had; and in many instances no juridical possession was ever delivered previous to the conquest.

In the case at bar it was impossible for the magistrate to deliver such possession until the previous grants to Weaver and Bernal, in the same general locality, had been surveyed and severed from the public domain. It was for the surplus in that territory, remaining after the quantities granted to them had been satisfied, that the present grant called. What part of the general tract occupied by the previous grantees would be finally set apart to them, could not be known until the official measurement. The grantees in this case were therefore necessarily compelled to await the action of the elder grantees; and no action was ever taken by them to segregate the quantity granted to them previous to the conquest.

This want of segregation of the quantities claimed by the previous grantees furnishes also an excuse to the grantees here for not entering upon the land without the delivery of juridical possession. To have made such entry would have been to intrude upon the possessions of others. They could not of themselves have undertaken to determine what part of the general tracts should be set apart to the earlier grantees, and appropriate the balance as the surplus to which they were entitled.

But independent of the considerations stated, it is a sufficient answer to the objection to say, that mere neglect to comply with the condition did not of itself work a forfeiture of the grantees right under the Mexican law. The neglect of a grantee to apply for or to take possession, if unreasonably prolonged, only left the land open to denouncement by other parties. The interest of a grantee could not be divested under the Mexican law any more than at the common law, upon mere allegations or surmises. Some formal and regular proceedings were required to effect such divestiture, and under the Mexican law these had their inception in what is termed a denouncement by a party desirous of obtaining the land. An investigation then followed whether or not the condition had been complied with or so disregarded as to justify a decree of forfeiture. Without such inquisition and decree the title did not revert to the government, nor was the land subject to be regranted.

The object of the colonization laws and regulations of Mexico was the settlement of the vacant lands of the republic, and grants were usually made to accomplish this purpose without other consideration. But the public, as observed in the Fremont case, "had no interest in forfeiting them even in these cases, unless some other person desired, and was ready to occupy them, and thus carry out the policy of extending its settlements."*

The several cases cited by counsel, where the absence of possession and the omission of proceedings usually taken in obtaining concessions of land, are noticed and made grounds of objection to a confirmation, have no application. They are cases, where the grants produced were unaccompanied by any archive evidence, and the attempt was made to uphold them by evidence of the recollections of witnesses. Thus, in the Cambuston case,† the alleged grant produced was unknown to any person beside the grantee and an interested party until July, 1850, although bearing date in May, 1846, and no trace of its existence was found in the archives of the country. So in the Castro case,‡ the instrument produced as a grant first made its appearance in June, 1849, though dated in April, 1846, and was not sustained by a single document in the archives. The absence of

*1 How., 561.

†20 How., 59.

‡24 How., 346.

all traces of the grants, where evidence would usually be found, if it had existed, naturally created a strong presumption against their validity, which could not be overcome by testimony resting on the uncertain recollections of Mexican officials.

There having been no forfeiture of the grantees' interest in the present case, nor any such disregard of the conditions annexed to their grant as to have justified a forfeiture, the claimants under the grant are entitled to a confirmation. The interest which passed by the grant, whether it be regarded as a legal title, imperfect in its character, and to be perfected by a subsequent official survey and segregation of the quantity designated, or as a mere equitable or inchoate title, constituted property which the United States were bound to protect by the stipulations of the treaty of cession. That treaty provides for the protection of the rights of property of the inhabitants of the ceded territory. And, independent of the treaty, they were entitled to such protection by the law of nations, according to which, as said by this court in *Strother vs. Lucas*,* "the rights of property are protected even in the case of a conquered country, and are held sacred and inviolable when it is ceded by treaty, with or without any stipulation to such effect."

By the term property, as applied to lands, all titles are embraced, legal or equitable, perfect or imperfect. It was so held by this court in the case of *Soulard vs. The United States*,† when considering the import of the term in a stipulation contained in the treaty by which Louisiana was acquired, providing that the inhabitants of that territory should be protected in the enjoyment of their property. "It comprehends," said the court, "every species of title, inchoate or complete. It is supposed to embrace those rights which are executory as well as those which are executed. In this respect the relation of the inhabitants to their government is not changed. The new government takes the place of that which has passed away."

It follows from the views we have expressed that the appellants possessed under the grant in this case, at the date of the cession of California to the United States, a right of property in the land granted, and, as a consequence, that their claim is valid and should be confirmed.

The decree of the district court must, therefore, be reversed, and the cause remanded, with directions to enter a decree confirming the claim of the petitioners; and it is so ordered.

* 12 Peters, 436.

† 4 Peters, 511.

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Dec. term 1869

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U. S. District Court
District of California

The United States

vs.

John Roland and

J. L. Hornsby.

Opinion of Supreme
Court of the United States

Filed January 16 '1871

Edw. B. Cotter Clerk

By A. W. Greenwood
De.

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In the District Court of the United States,
Now for the District of California

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The United States
vs
John Roland and
J. L. Hornsby

On reading and filing
the Opinion of the Supreme Court in the
above entitled Cause and on reading and
filing the Mandate therein reversing the
decree of this Court heretofore rendered and
directing this Court to enter a decree in the
said Cause confirming the claim of the
Petitioners and to take such further pro-
ceedings in the said Cause in conformity
to the opinion and decree of the said Su-
preme Court as according to right
and justice and the laws of the United
States ought to be had; and Patterson
and Stow Counsel for Claimants having
moved the Court to enter a decree therein,
the United States Attorney being present

and having been heard

It is now by this Court in pursuance of said Opinion and said Mandate Ordered, adjudged and decreed that there be and there is hereby confirmed to the said John Roland and J. L. Hornsby their heirs and assigns forever that certain tract of land known and designated by the name of "Los Nuecos" and being the Sobrante or Surplus lands of the Ranchos "Cañada de San Felipe y las Animas" belonging at the date of the grant herein to C. M. Weber and "Cañada de Pala" granted to Jose de Jesus Bernal. lying and being between said Ranchos, and bounded thereby, embracing the lands of the "Cerro Colorado" towards the slope of the Valley, to the extent of nine leagues and no more, and lying and being in the County of Santa Clara.

John H. H. H.
Dist. Judge

Entered in Book 1 Judgments & Decrees page 389.

Jan 16/91

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U. S. District Court
District of California

The United States

v.

John Roland and
J. L. Hendley.

Secree

Filed January 16th 1891
Edw B Cottel Clerk
By M. W. Ginnwood
for C. D. C.

Cited in 18th 1. Judgts Decrees p. 389

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The United States
vs
John Roland et al } No 221. ND

The claimant in this case produces in support of his claim an expediente from the Archives and the original titulo or grant delivered to himself —

The expediente is composed of 1st — a petition by Luis Arenas & John Roland soliciting "the vacant lands at the places called Las Animas and Cañada de Pala belonging to Don Carlos Weber & Jose de Jesus Bernal including the lands of the cerro Colorado towards the slope of the valley to the extent of 9 leagues" a map of which they offer to present at a convenient time.

This Petition is dated May 5 1846 On the same day the Governor by a marginal order directs the decree of Concession to be made out and the title to issue.

The decree of concession and the borrador or draft of the titulo constitute the remainder of the expe —

diente - They are both dated on the succeeding day May 6th

The genuineness of these papers and of the title produced by the Claimants is not disputed by the Counsel for the U. S.

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It will be observed that the petition was unaccompanied by a diseno and that the description of the land was vague and loose

No informes were asked for or inquiry made as to the condition of the land or the qualifications of the parties.

The whole ^{proceedings} was begun and consummated within two days.

No evidence has been offered to show that either of the grantees ever settled or attempted to settle on the land.

It does not even appear that they ever visited it. Certainly no diseno or map of it was presented as promised in their petition.

Nor is it shown that a sobraute of the extent of 9 leagues or indeed any sobraute whatever

exists between the rancho's named

exists between the rancho's named
in the grant —

The case is thus barren of all
equities — The claim rests on the
bare fact that the Governor without
informers or investigation and ^{with} no
time for ~~any~~ ^{either} then saw fit to sign
a title paper for a tract of land
supposed to exist and that this
title paper has been retained by
the parties without the performance
of a single act to assert their
title or perfect their rights.

Under the views originally enter-
tained by this Court a claim of this
kind would have been unhesitatingly
rejected for want of occupation
and settlements which were consid-
ered essential to create in the holder
of an unapproved grant any equi-
ties which the U.S. were bound to
respect —

Those views however are un-
derstood to have been overruled by the
Supreme Court in the case of Fremont.

It was there held that the un-
approved grant of the Governor
passed a vested interest to the grantees

That possession and occupation were not necessary to complete the title thus conveyed, and that it would be forfeited in those cases only, where the grantee had so unreasonably neglected the performance of the conditions as to justify the inference that he had abandoned his claim during the existence of the former government.

As the time allowed for settlement and occupation was unusually one year it is evident that with respect to the numerous grants made by Pio Pico towards the close of his career, neglect to fulfil the conditions during the short time that intervened between the dates of the grants, and the change of flags could not be received as justifying the inference of abandonment. The excuses too which were received by the Supreme Court, as sufficient viz: - the hostility of Indians & the disturbed state of the Country can in almost all these cases be urged with the same force as in Fremont's case -

It follows that with respect to the

It follows that with respect to the later grants of Pio Pio the neglect to comply with the conditions can ~~thereby~~ ^{rarely} under the ruling in the case of Fremont be urged to defeat the claim.

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But It may be doubted whether the Supreme Court will adhere to the rule thus laid down.

The later Cases seem to justify the inference that when the point is again presented the rule will in its application to future cases receive important qualifications

Certainly the case at bar presents the objections to its adoption in the strongest lights —

But the case of Cambuston (20th Howard 59) appears in many respects analogous to that under consideration

In that case great emphasis was laid upon the fact that no informes were asked for "nor any of the preliminary conditions complied with which enabled the Governor to make the grant" (p. 63) —

"The Court" it is declared "must look to the laws and regulations

" both for the power to make the
" grant & for the mode & manner
" of its exercise and they are to be
" substantially complied with
" except so far as modified by the
" usages and customs of the Government
" under which the titles are derived
" the principles of equity & the decis-
" ions of this Court "

Much stress is also laid upon
the fact that " the grant was made
" so near the time when the Govern-
" ment of the Territory passed from
" the Governors hands and indeed
" during the very heat & struggle
" in which his power was overthrown "

The grant in that case
was dated May 23rd 1846. In this
it is dated May 6 1846

The inquiry ~~is~~ therefore
in these cases is not merely whether
the Governor in fact signed & de-
livered a paper purporting to
be a grant on a particular day
but whether in so doing he acted
in the fair and regular exercise
of his powers under the laws and
regulations and with the

bona fide intention of carrying

bona fide intention of carrying
out their policy.

It is I think impossible that the
Governor in directing this title to issue
without informers or investigation and
on the very day the petition was
presented, for lands vaguely de-
scribed & which the parties had
never occupied or settled upon,
can be deemed to have so acted.
On the whole I think that this
claim is without merit and should
be rejected.

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U. S. District Court
Dist. of California

The United States
v. S.

John Roland

Opinion rejecting
Claim

Rendered

May 12, 1863.

U. S. District Court

26. S
vs } L. C. 282 D. C. 221.
Juan Roland + Luis Arenas

for "Los Huecos" - a Sobrante of 9 leagues
near San José

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The evidence is documentary + parole

Documents

1 Expediente No 557.

Petition dated May 5th 1846
solicits grant of Sobrante of
9 leagues between certain Ranchos +

Marquial Dean of Concepcion May 5th 1846

Vista la solicitud May 6th 1846

Provision of Grant May 6th 1846

2 Grant May 6th 1846

Depositions

Juan de la Valle
Proves genuineness of signatures

Stipulation

By stipulation in L. C. either party was at
liberty to use all matters in evidence in certain
other cases; but as those matters throw no light
upon this claim, they may be at once discarded.

[Faint, mirrored handwriting from the reverse side of the page, including the words "Documents" and "Petition"]

No. 1
vs 3 for "Los Hueros"
John Roland

L. C. 282 D. C. 221.

Brief

P. Della Torre
of Counsel

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Objection

The claim is too vague & infirm to succeed.

The Expediente is remarkable. There is no diseño, reference or "informe", although it would seem an instance in which there should have been some enquiry. On the face of the petition, Claimants asked for a *Advanche*; so that it was evident, there were certain "colindantes", in favor of whose rights, the regulations of 1828 were provided.

The unusual speed of these proceedings, is noteworthy: the fact of their non-submission to the Departmental Assembly, of course, precludes the idea of their being a complete title.

The genuineness of ~~the~~ the documents is not impugned: their validity to confer title which this Court must recognize, is denied.

As the documents are in themselves insufficient manifestly, to clothe the claim with sufficient title, ~~part~~ evidence should have been supplied to raise an Equity in its favor. This has not been done.

The only part testimony is that of Ignacio del Valle, who simply proves the signatures to the papers. This of course is insufficient.

There is no evidence of any possession, or cultivation: or of any attempt at either, from the date of the grant to this present hearing. Therefore the case is barren of merit, and there is no Equity to incline the Law in its favor.

There is not even any evidence of the existence of a subject matter for the grant to operate upon; for there is ^{no} proof that substance there is such a "*Advanche*". It would be idle for the Court, to confirm a claim to any thing, until it is shown, that there is such a thing really existing.

Respectfully Submitted

P. Della Torre

of Counsel.

L. C. 282. D. C. 221.

The United States

v.

Roland et al
for Rancho "Los
Nuevos."

Brief.

P. Della Torre
of Counsel

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

N^o 221.

John Roland &
J. L. Hornsby } Appellants

vs
The United States - Appellees

It is admitted that on the 22^d day
of July 1845, a grant was made
by Gov^r Pio Pico to John Roland and
Julian Workman of four leagues of
land in the Southern part of California,
and that on the 2^d day of May
1846, a grant was made by Pio
Pico, then Gov^r of California, to
John Roland of eleven leagues of
land on the Stanislaus River -
and that the said John Roland
is the same person who is one of
the claimants in this case.

San Francisco, November 2^d 1857

A. P. Outtenden
Att^y for Claimants

Nov 2/57

N^o 221-

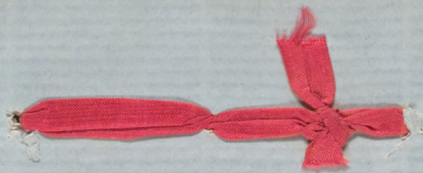
U. S. Dist Court

John Roland &
J. L. Hornsby
vs Appellants

The United States
Appellees -

Admission of
Appellants -

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

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John Poland &
 J. L. Hornsby } Appellants

No 221-

The United States - Appellees.

The grant in this case was made on
the 6th of May 1846 by Gov Pio Pico to Luis
Arenas and the claimant John Poland, one
of the appellants. The grant, with the proof
of its execution, appears in the transcript.

Luis Arenas conveyed his interest
to James M Jones, who died and devised
all his property to the appellant J. L. Hornsby.
The deed of Arenas to Jones, and the will
of Jones appear in the record.

The grant was never approved by
the Departmental Assembly, nor was
judicial possession ever given to the
grantees.

The grant is of the surplus lands
(sobrantes) of two tracts which had been
previously granted - one "Las Animas" to
Carlos Vercas, and the other "Pala" to
to Josi de Jesus Bemal - to the extent
of nine leagues.

By stipulation all the papers relating to these two grants were given in evidence and are contained in the transcript in this case - An examination of them will sufficiently identify the land intended to be granted to Roland and Arucas. The grant to them however contains a further designation of the land which would render it certain what land was intended if any doubt should remain after examining the boundaries of "Pala" and "Las Animas". The tract granted includes the "lands of the red hill" and runs towards the slope of the valley for quantity ("till the quantity of nine leagues is made up.") The red hill (Cerro Colorado) is a natural object which cannot be mistaken and the direction of the survey is determined by reference to the slope of the valley. The tract will be bounded by the lines of the two other tracts referred to, and will include the "red hill" and run towards the slope of the valley. If any one of the lines of either "Pala" or "Las Animas" on the side of the "red hill" is determined there can be no difficulty in fixing the location of the land; indeed the position of the "red hill" alone and the direction in

which the land is to extend, being given, its location is determined.

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And in regard to the lines of the two tracts referred to, it should be remarked that it makes no difference whether the titles of the claimants of those tracts be good or bad, or whether they be confirmed or rejected, if the lines themselves or any of them are known or may be ascertained.

This question of location is alluded to only because the want of definite description was made one of the grounds on which the claim was rejected by the Board of Land Commissioners. Since the decision of the Board in this case the Supreme Court, in the case of Fremont, has settled the law upon the subject. The question of location is one to be determined by the Surveyor General, not by the Court.

The claim was rejected by the Board mainly upon the ground that that the conditions of the grant had not been complied with.

The grant does not require any occupation by the grantees. The clause requiring a house to be built on the land within a year and that it should be

inhabited, is omitted. Such a condition not being in the grant cannot be created by any presumption or implication
10 Pet. R. 307 - 15 Pet. R. 130.

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But if this omission should be held not to alter the condition of the grantees and they are still to be considered as bound to the performance of the usual condition in this respect to the same extent as if it had been inserted, then it is insisted that the occupation of the country by the American forces before the expiration of the year allowed for performance, followed by its acquisition by the U. S. by treaty, dispensed with the performance of the condition.

The grant was made on the 6th of May 1846. On the 7th of July 1846 the American forces took possession of Monterey, raised the American flag there, and from that time treated the whole of Upper California as in the military occupation of the United States. In point of fact, that occupation was not complete throughout California, nor was there present such a force as to make it effectual until some time after that date. But the occupation of the whole

of California was complete before the expiration

Country was complete before the expiration of a year from the date of this grant. Within that period, all resistance on the part of the former government and the people of the Country had ceased and the authority of the American Government was completely established.

But in the consideration of this point, it is not an open question as to the time when there was a complete occupation of California by the forces of the United States. Without any examination into the actual facts, that occupation is to be deemed to have commenced on the 7th of July 1846 and to have continued down to the date of the treaty, for the reason that the political department of our government so intended and considered. The instructions given by the heads of the several departments to officers of the U. S. in Command and employed in California, and the Acts and proclamations of those officers in pursuance of their instructions, show that when the American forces first entered California it was with a view to permanent conquest and the ultimate acquisition of the Country, and that the whole

Country was considered as occupied from the moment the flag was raised at Monterey. See. Cal. Message & Correspondence - 1850 - pages, 233 - 238 - 244 - 246 - 288 &c -

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The political department of the government having given this character to the occupation of California, the judicial department is bound to consider it as possessing that character.

This is most clearly so in a controversy between the government of the U. S. and one of its own citizens.

California is then to be deemed to have been completely conquered from the 7th of July 1846.

Upon the conquest of a country the relations of its people to their former sovereign are dissolved. All those laws which may be called political are necessarily abolished. The former sovereign is displaced and can, of course, no longer exercise any of the powers of sovereignty. 1 Pet. R. 571 - Vattel's Law of Nations.

So completely is this the case that the conquered territory is even to be deemed by its former sovereign, a foreign country. 4 Wheat. R. 246.

This effect of a hostile occupation

Continues so long as such occupation lasts.

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In the case of California the sovereignty of Mexico ceased on the 7th of July 1846 and was never revived. During the war it was suspended, and by the treaty extinguished.

Its suspension during the war was complete. While the American forces occupied the Country, Mexico could no more exercise any of the powers or claim any of the rights of a sovereign in California, than she could after the treaty. The treaty merely relinquished her claim to sovereignty for the future.

In reference therefore to the exercise of any sovereign power by Mexico, she may be considered as having surrendered, and the United States as having acquired it, on the 7th of July 1846.

The power to grant the public land, or to affix conditions to such grants or to enforce the performance of conditions is a sovereign power and, from its nature, is one of those powers which Mexico could not exercise in California after the 7th of July 1846. From that date she could neither confer a right in regard to land in California, nor take one away, and

hence it necessarily follows that no right could be acquired as against her, that no act or omission of an individual, in fulfilment or in violation of a law of Mexico, could strengthen or impair his claim or title to land derived from that government. Her interest in the subject had ceased, her power over it was gone, and her laws in reference to it were no longer in force.

The United States occupied in regard to these grantees the same position on the 7th of July 1846 as after the treaty. Her ~~power~~ power and interest of the U. S. were substantially the same at both periods, the only difference being that until the treaty the title of the U. S. to the conquered territory was defeasible. The Govt of the U. S. claimed and rightfully exercised after the 7th of July 1846, all the rights and powers of a sovereign, and even an alienation of California, made by the U. S. before the treaty, would have been valid.

Vattel's Law of Nations, Book 3, Chap. 13, Sects. 197 & 198 - and Chap. 14, Sect. 212.

What law then prevailed and

is to be applied in considering the

is to be applied in considering the necessity of a performance by the grantees of this condition of occupation? Now the law of Mexico for that ceased to be in force after the 7th of July 1846. Under that law the grantees had a year allowed for performance, and if this condition, though not contained in their grant, is to be imposed by implication they are, of course, entitled to claim the usual time for performance of that year, only two months and a day had elapsed when the law ceased to be operative. Down to that period the grantees were not in default under the law of Mexico. They had incurred no forfeiture to Mexico which the U.S. as her successor, could enforce.

As there is and was no law of the U.S. to continue in force the conditions imposed by Mexico upon her grantees, they must if necessity be considered as dispensed with by the change of sovereignty, where, previous to that change, no forfeiture had been incurred.

The time of performance not having elapsed, when the change of sovereignty occurred, and performance

not being required by the Law of the new sovereign, it becomes wholly immaterial what acts were done or permitted by these grantees in the way of occupation or improvement of the land granted to them.

What has been said in regard to this condition of inhabitancy applies also to the other conditions which are expressed in the grant, such as obtaining judicial possession of the land, and the approval of the grant by the Departmental Assembly. These acts might be performed under the Mexico law at any time and the grantees were not in default in not performing within two months. The change of sovereignty not only rendered the performance of them unnecessary, but impossible by depriving of all power to act those ^{agents} ~~agents~~ of the former government whose agency was indispensable. After the 7th of July 1846 there was no authority in an Alcalde to give judicial possession of land and there was no Departmental Assembly to confirm a grant.

These views might be presented more fully and enforced by reference to instances in which a change of sovereignty necessarily operates to change the tenure by which land is held. But as this question has been examined and decided by the Supreme Court of the United States, it is enough to refer to the law as settled by that Tribunal - in the case of *Arredondo & Peters* R. 745, 746, and of *Fremont* 17 Howard 557-560 to 565. This last decision covers every question which can arise in this case as to the description of the land and the performance of the conditions of the grant -

A P. Cuttenden

Att. for Appellants.

Upon the question in regard to the power of the Governor to make this grant, the Court is referred to case No 103. *John Roland*, Appellant vs The United States Appellees, in which the same question is presented and is to be argued.

A P. Cuttenden

Notice of appeal filed
Dec 3, 1853-

No 221
U. S. Dist. Court

John Roland +
J. L. Hornsby
vs Appellants
The United States
Appellees

Brief of
Appellants -

A. P. Butterfield
Atty -