

CASE No.

124

SOUTHERN DISTRICT

CUYAMACA GRANT

AGUSTIN OLVERA

CLAIMANT

LAND CASE 124 SD

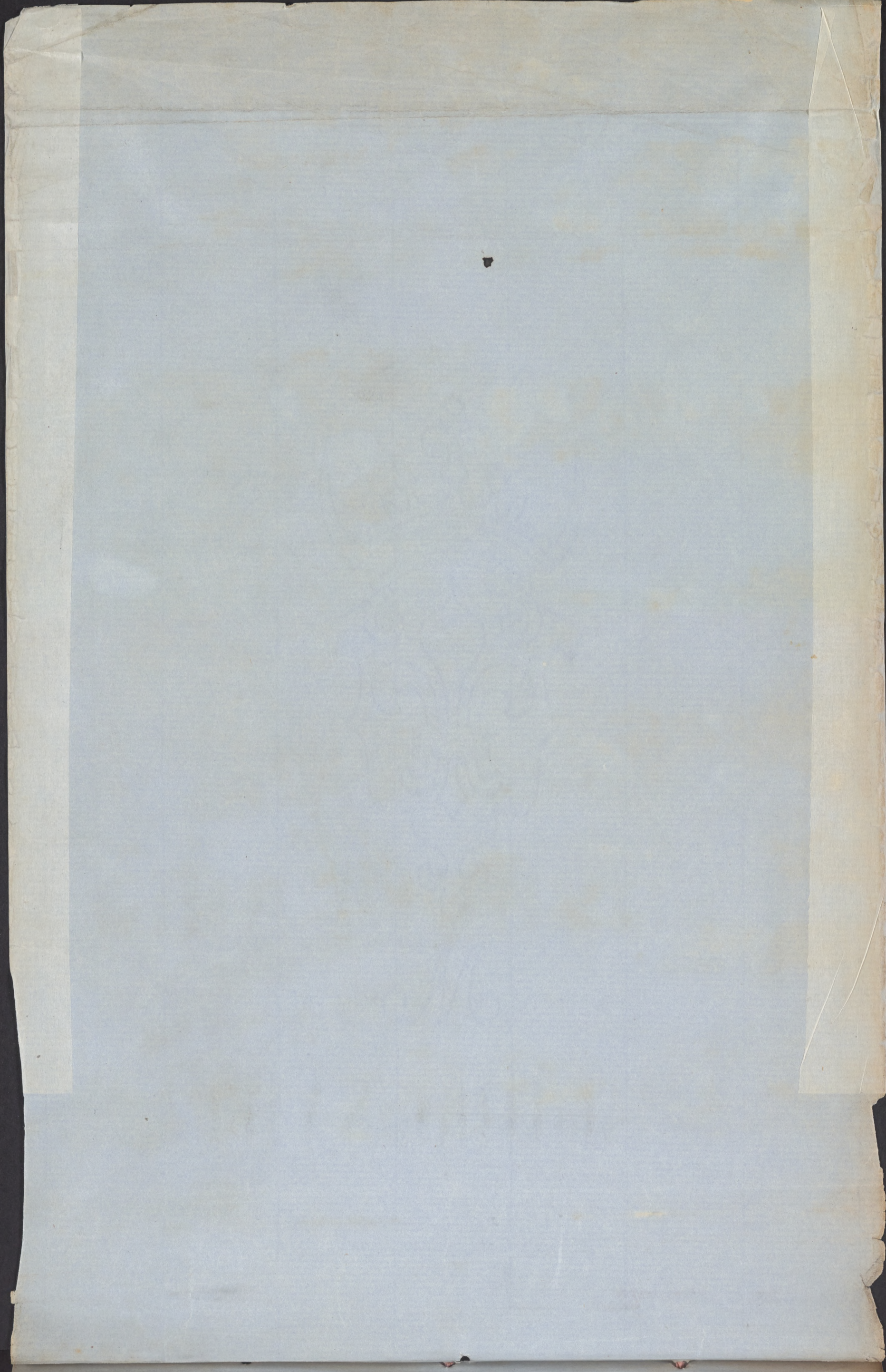
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Plover Bond
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U.S.A.

375

Robert [unclear]



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PAGE 1

TRANSCRIPT

OF THE

PROCEEDINGS

IN CASE

NO. *375*

Agustin Olvera

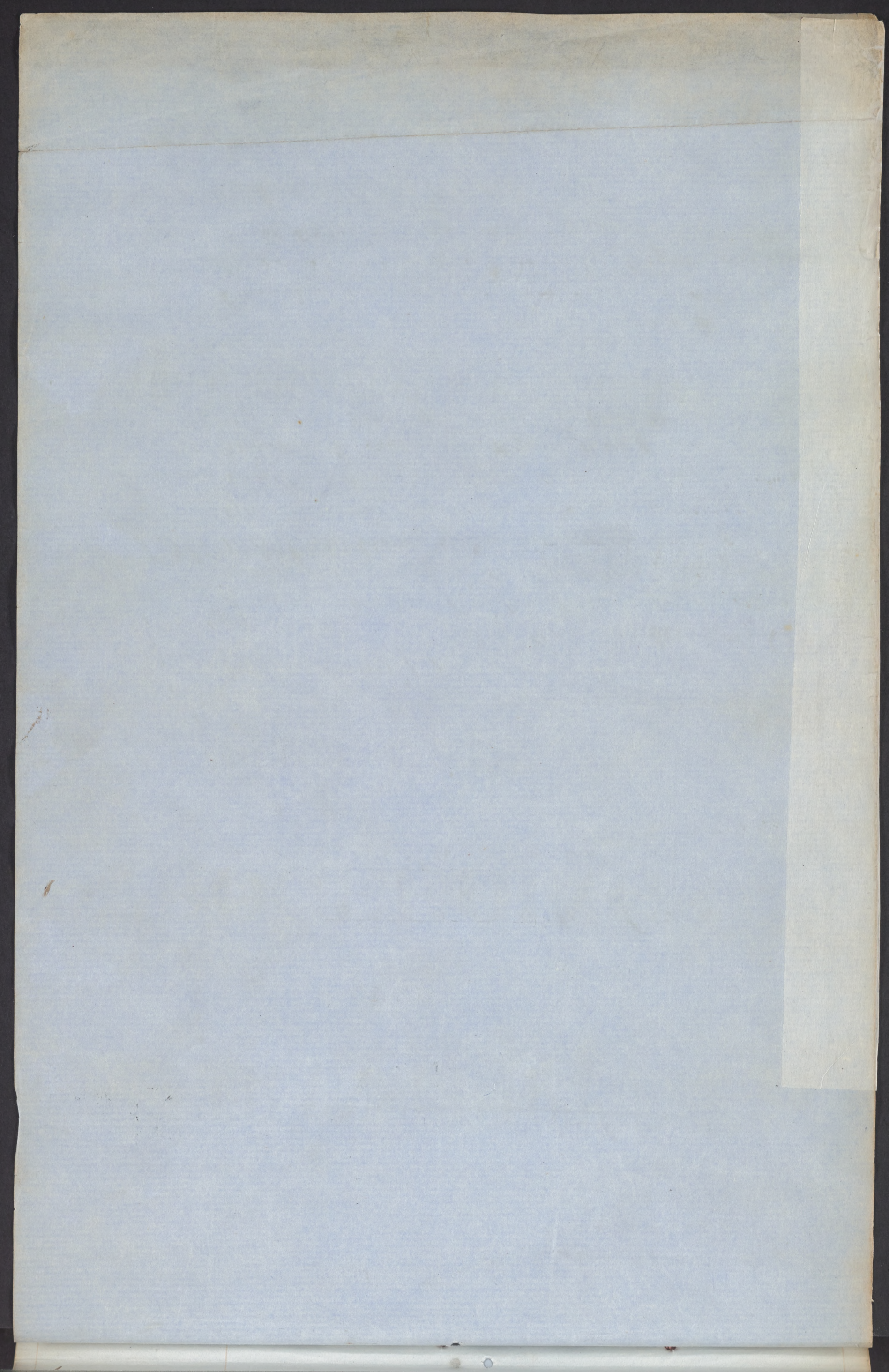
CLAIMANT

VS.

THE UNITED STATES, DEFENDANT,

FOR THE PLACE NAMED

"Cuyamaca"



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 October*, 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 *Agustin Olvera*,
for the Place named
"Cuyamaea",
was presented, and ordered to be filed and docketed with No. 375, and is as follows, to wit;

Los Angeles Oct. 16.
1853. In Case no. 375.

(Vide page 3 of this Transcript.)

Agustin Olvera for the place named *"Cuyamaea"* had in their chronological order, to wit;

the deposition of Santiago Estruella, a witness in behalf of the claimant, named *"Cuyamaea"*, the deposition of Stugs Reid, a witness in behalf of the claimant, taken before Commissioner Melara Hall with documents marked H. H. No. 1 & 2 and translations thereof marked B, annexed thereto, was filed.

Los Angeles, November 4 1852.

(Vide page 8 of this Transcript.)

(Vide page 5 of this Transcript.)

San Francisco, Aug. 18 1853.

Case no. 375, called, The Counsel for the claimant read the evidence; argued, submitted and taken under advisement,

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San Francisco April 4th 1854,
In the same case Commissioner R. Aug. Thompson
delivered the Opinion of the Board rejecting
the Claim;

(Vide page 29 of this Transcript.)

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

(Vide page 34 of this Transcript.)

To the Honble the Board of U.S. Land Commissioners appointed to settle Private Land Claims in California,

The Petition of Agustin Olvera, respectfully sheweth:

That on or about the 11th day of August 1845, Pio Pico then Senor Member of the Departmental Assembly and Governor ad interim of the same in the name in the name of the Mexican Nation by virtue of the Colonization Laws of August 18th 1824 the Regulations of Nov. 21st 1828, the various Laws of Mexico, the Customs and usages of the Country affecting grants of land in California, I granted in full property unto your petitioner the tract of land and rancho known by the name of Cayamaca, situate in the then jurisdiction of San Diego, containing eleven Spanish square leagues of land as designated bounded and described in the papers and Maps in the Archives now in the Office and Custody of the U.S. Surveyor General for California as well as the original papers and maps in the possession of your petitioner, copies of all of said papers and maps being herewith filed, to which your petitioner prays leave to refer as part of this petition.

Your Petitioner further sheweth that he petitioned Jose A. Estudillo then first Justice of the Peace and its jurisdiction requesting said Estudillo to place your petitioner in judicial possession of said tract of land called Cayamaca,

That on or about the first day of April A.D. 1846, the said Jose A. Estudillo made official certificate of the reasons why he could not place your petitioner in judicial possession of said lands, and further certified to his knowledge of said tract of Cayamaca and that the same was in accordance

Petition

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with the Map in the Archives in the
Custody of the U.S. Surveyor General for
California and the certified copy now in
possession of your petitioners, that a
copy of said certificate and map is
herewith filed and to which your petitioners
pray leave to refer as part of this
petition.

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And your petitioners further
showeth that the said Grant was approved
by the Departmental Assembly of California
on or about the 29th day of August A.D.
1839 as appears by an original paper
now in possession of your petitioners
ready to be produced and proved.

That a copy of the same is herewith
filed to which your petitioners pray
leave to refer as part of this petition.

There is no conflicting claim
thereto known to your petitioners.
And said lands have not been surveyed
by the U.S. Surveyor General for Califor-
nia. The evidence upon which your
petitioners rely in this case are the
records of this grant, papers and maps
in the office and in the custody of
the U.S. Surveyor General for California,
original papers and maps in the hands
of your petitioners relating to said
lands. Copies of all said papers
and Maps are herewith filed and your
petitioners pray leave to refer to the
same as part of this petition.

And the testimony of witnesses to be
produced before your Honourable Board.

Respectfully submitted for such
action as the justice and nature
of the claim may require.

E. V. Crosby,
Of Counsel for Claimant,

Filed in Office Oct 6th 1852.
Geo. Fisher Sec.

Office of the U.S. Land Commission
Los Angeles Oct. 16th 1852,

Deposition of
Santiago E. Arguello

On this day before Neiland Keall one of the
Commissioners for ascertaining & settling Private
Land Claims in California in California
came Santiago E. Arguello a witness offered
in behalf of the Claimant Agustin Olvera
whose petition is No. 375 on the Docket
of the Board and was duly sworn,
His evidence being given in Spanish
was interpreted by the Secretary.

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The U.S. Associate Land Agent was
notified and attended.

In answer to questions propounded
by claimant the witness testified as follows.

My name is Santiago E. Arguello. I am
thirty nine years old. I reside in San
Diego, I am a native of Sta. Barbara,
California, and have lived at San Diego
since 1818.

I have known Agustin Olvera
since the year 1834. I am acquainted
with the tract called Cayamae.

It contains about nine or ten "sitios"
It is situated about ten leagues east
from the Mission of San Diego.

It was granted to Don Agustin Olvera
in 1845 or 1846. I am acquainted with
Jose Matias Moreno. He was secretary of State
(Secretaria del Despacho) in 1845.

I am acquainted with his handwriting and have
seen him write.

The papers now
shown to me marked H H No 1 and pur-
porting to be a map of Cayamae on which
there is a certificate with the signature
of Jose Matias Moreno I have carefully exam-
ined.

I believe the said signature of
the said Jose Matias Moreno to be genuine.

I have examined the said map & certificate
and have no doubt that they are genuine papers.

and were made at the date which they bear.

The said map is sufficiently accurate to distinguish the tract in question.

The names of particular spots that appear on its face are well known names of particular localities.

The boundaries can be recognized by the help of said map. I have frequently been on said tract and have examined it and know these facts from personal knowledge.

A short time, six months perhaps, after the grant to said Olvera, the latter who then lived at Los Angeles made a contract with a German, who was known amongst us by the name of Cesario, for the occupation of Cayamaca. The said German actually repaid the said tract with servants and some horses of Olvera. He applied to me for tools & oxen which I lent to him.

He lived on the tract about three months. I was informed and believe that he there at that time built a small house & corral; and by the help of saws which he procured from me got out some timber for building on a larger scale. He was still at work upon said tract when Captain Dupont arrived at San Diego.

At this time I was at the head of a volunteer force in that neighbourhood. Said Cesario, who was reputed an American became alarmed at his isolated situation during hostilities and came to claim my protection.

I enlisted him in my company Cayamaca being thus unprotected the Indians fell upon it & robbed or destroyed all they found. Some property I had there was thus lost. The force of volunteers which I commanded, was a force organized under my command by myself by virtue of a commission as Captain issued to me by Comadore Stockton.

There has been no safety from the time of the said abandonment of Cayamaca, to make

any attempt at reoccupation.
Many Ranchos in that neighbourhood have
been necessarily abandoned. Cayamaca
is not far from Aguas Calientes which
an Indian force attacked & plundered a
short time since.

I have been acquainted with Jose
Antonio Estudillo since the year 1820.
I have seen him write and sign his
name. I know his hand writing.

The paper now shown to me marked
H. C. N. 2 is in the hand writing of
said Estudillo, is genuine and was made
at the time of which it bears date.

Said Estudillo was Parish Justice of the
Peace of San Diego and as such compe-
tent to give possession.

I was present when Olvera applied for
the judicial possession of Cayamaca.

The circumstances alledged in said papers
as an excuse for not complying with said
request of Olvera was according to the truth.

The high mountains around Cayamaca
are covered with snow at that time of the
year and the then recent rains had rendered
this track impassible.

It was a short time after this application
to Estudillo that the aforementioned occupation
by Olvera's agent took place, and soon
after that the U. S. Sloop of War Cyane
Capt. Dupont came to San Diego.

The Magistrates all resigned upon the U. S.
flag being raised and I was appointed
Justice of the Peace.

Olvera renewed his application to me
just as I returned to San Diego after making
several deliveries of possession of ranchos.
My occupation did not permit me to
return again to that neighbourhood & I was
obliged to decline.

In answer to questions by the Associate
Leary Agent the witness says that the German
took some stock on the place which was
lost when he was obliged to leave.

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From that period to this, no attempt to occupy the land has been made by the Claimant or anyone else, in consequence of the hostility of the Indians.

Santiago E. Arguelles
Sworn & subscribed before me
Neiland Keall
Com^r

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Filed in Office Oct 16th 1852

Geo. Fish
Sec

Los Angeles Nov^r 4th 1852.
On this day before Com^r Neiland Keall
Came Henry Reid, a witness in behalf of
the Claimant, Agustin Alvera petition
No. 35 and was duly sworn, his evidence
being given in English.

Deposition
of Henry Reid

The U.S. Associate Land Agent was present

In answer to enquiries by Counsel for the
Claimant, the witness testified

My name is Henry Reid, my age is 41
years and I reside at San Gabriel in the
County of Los Angeles.

I am acquainted with the handwriting
& signatures of Pio Pico & Jose Matias Moreno
& Jose Ma Covarrubias.

A paper is now shown me purporting to
be a grant to Agustin Alvera of a Tract
of land called Cucarnacaca, dated 11th of
August 1845.

The signatures of Pio Pico & said Covarrubias
upon said paper I believe to be genuine.

It is here annexed & marked H.C. No. 1.
A paper is also shown me purporting to be
a testimonial of the Approval of the Department of

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Assembly of said grant, dated 6th June 1846.
The signatures of said Pico and Moreno on
said paper I believe to be genuine.
This hereto annexed and marked H. H.
N^o 2.

Henry Reid

Sworn & Subscribed

Before me

Neiland Hall

Com^r

Sued in Office Nov^r 4th 1882. Geo. Fisher Secy

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Spanish Gold

20

1500

10

1846.

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Expediente promovido por
Sr. Augustin Oberra del parage
de Buyamaea en la jurisdiccion
de San Diego y que le fue con-
cedido en propiedad por el Supe-
rior Gobierno Departamental en el
año de
1845.

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Francisco Hernandez

2 L.P.N.

Excmo Señor Gobernador.

Angelos Junio 10
de 1845.

Pase al Sr.

Jn Joaquin Ortega
p. q. como coliva-
ante diga lo q. se
pa sobre el particu-
lar y al Alcalde
de San Diego p.
que de el informe
respectivo.

Pico.

San Luis Rey
Junio 18 de 1845

El terreno
conocido con el nom-
bre de Guyanaca,
es colivante con
Sta. Isabel y se aya
enteramte balesis,
y se estende hasta
Milonatay y parte de
del Valle de la Vieja,
es cuanto puedo de-
cir en consecuencia
a lo que se me pre-
gunta de conformidad
con el superior decreto
que antecede.

Joa Joafr Ortega.

nacimiento establecido en este Departa-
mento ante la recta justificacion de V.E.

y como mejor proceda en derecho respetu-
osamte digo: Que teniendo dispuesto

hace bastante tiempo mudar mi domicilio
al Pueblo de San Diego lo que pretendo

verificar pronto y sabedor de que a dis-
tancia de diez y seis leguas de alli poco

mas ó menos se halla un terreno totalmente
balesis, ya por su distancia y ya por un-

contrarse á la parte de la Sierra, conocido
con el nombre de Guyanaca y considerando

que de su ocupacion resultara mas prove-
cho que del abandono que hoy tiene: Si-

plio á V.E. me conceda si lo tubiere á
bien para mi beneficio personal y el

de mi familia la propiedad de el conar-
reglo á la ley de Colonizacion del año de 24

de Guyanaca, y de cuyo terreno presentari
el diseño respectivo por no poderlo hacer

por no poderlo hacer
ahora mismo con esta, á virtud de impedir-

me las atenciones de mi destino, pero cum-
plir con este requisito como dejo indica-

do y juro V. E. sirviendose dispensarme
del uso de papel comun por falta de

el sellado correspondiente en el lugar.

Angelos Junio 5 de 1845.

Agustin Olvera.

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3 L.P.N.

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Quero Señor.

Atento al decreto Superior de V.E. de 10 de Junio pp.^{do} que antecede: El paraje que solicita el interesado, conocido por Cuyamaa, es valioso y no pertenece à particular ni corporacion pues solo se haya habido por algunos quales por lo que aparece que no presenta obstaculo para q. si V.E. lo tubiere à bien se sirva concederle al solicitante.

San Diego Julio 31 de 1845.

Jose R. Arguillo.

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4.º L.º N.º Angeles Agosto 11 de 1845.

Vista la peticion con que en principio este expediente, los informes en el practicados con todos los demas q. se tuvo presente y ver combino de conformidad con lo dispuesto en la ley de 18 de Agosto de mil ochocientos veinte y cuatro y Reglamento de 21 de Abril de mil ochocientos veinte y ocho se declara al Ciudadano Agustín Obra dueño en propiedad del paraje nombrado Cuyamaa en la jurisdiccion de San Diego, librese el título correspondiente y en el auto que cuando se ponga en posesion juridica, formado que sea el auto correspondiente que original debe correr agregado à este mismo expediente. El Juez que lo poseione pase al Gobierno la noticia del numero de sitios que comprenda y someta esta concesion à la aprobacion de la Exma Asamblea Departamental.

5.º L.º N.º

Pio Pico Gobernador Interino del Departamento de las Californias asi lo mande decretar y firme de que doy fe.

Pio Pico.

6.º L.º N.º

Pio Pico Vocal mas antiguo de la Honorable Asamblea del Departamento de las Californias y Gobernador interino del mismo.

Por cuanto el Ciudadano Agustín Obra ha pretendido para su beneficio personal y el de su familia el paraje conocido con el nombre de Cuyamaa en la jurisdiccion de

San Diego practicadas porbiciamente las diligencias y obsequios concernientes segun lo dispuesto por leyes y reglamentos usando de las facultades que me son conferidas à nombre de la Nacion Mexicana he venido en acuerdo de este dia concederle el expresado terreno declarandole la propiedad de el por los presentes letras intencionadas aha. concesion de entera conformidad con las leyes, à reserva de la aprobacion de la Exma. Asamblea Departamental y bajo las condiciones siguientes.

J.L.M.

1^a Podrá cercarlo sin perjudicar los caminos y servidumbres lo disputará libre y exclusivamente dedicandolo al uso ó cultivo que mas le acomode.

2^a Solicitará del Juez respectivo le de la posesion juridica en virtud de este despacho por la cual se demarcarán los linderos respectivos en cuyo lugar pondrá el interesado las mojones necesarios.

3^a El Juez que diere la posesion lo hará mediamente conforme à ordenanza teniendo cuidado que al tiempo de dar la posesion se forme el diseño correspondiente y original lo pase al Gobierno con la noticia del numero de sitios que comprende.

En consecuencia mandó que teniendo se por firme y valido el presente titulo se tome razon de el en el libro à que corresponde y se entregue al interesado para su resguardo y demas fines.

J.L.M.

Dado en la Ciudad de los Angeles à once de Agosto de mil ochocientos cuarenta y cinco en este papel comun por falta de sellado.

Queda tomada razon de este titulo en el libro à que corresponde.

Angelas Mayo 8 de 1846.

Dado cuenta en sesion de hoy con este Exped.^{to} à la Exma Asamblea Departamental se mandó pasar à la Comision de terrenos baldios. = Agustin Oberra = D.S.

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ES.

La Comision de Terrenos baldios a examinado con detencion el antecedente Exped^{to} promovido p^r el C. Agustín Oberra relativo al paraje de Guyamas q. le fue con-
cedido p^r el Sup^o Gob^{no} Departam. con arreglo a las leyes
de la materia en esta virtud pone a la deliberacion de V^o la
proposicion sig^{te}

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Se aprueba la concesion hecha al C. Agustín Oberra
del paraje conocido Sierra de Guyamas en la jurisdiccion
de San Diego en atencion de lo q. acienta la condicion 3.^a del
titulo librado con g^{ta}. 11 de A^{to} de 1845 con arreglo a la ley
de 18 de A^{to} de 1824 y al art^o. 5.^o del Reglamento de 21 de g^{ta} de
1828.

Sala de Comisiones en la Ciudad de los Angeles Mayo 22
de 1846.

S. Argüello.

Angelas Junio 3 de 1846.

En sesion de este dia se aprobo la Ex^{ta}
Asamblea Departamental la proposicion del dictamen
anterior

No se follows the map

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

I Samuel M. Wing Surveyor General of the United States for the State of California and as such now having having in my office and under my charge and control a portion of the Archives of the former Spanish and Mexican Territory or Department of Upper California do hereby certify that the two preceding and hereunto annexed pages of tracing paper numbered from one to ten inclusive and each of which is verified by my initials (S.M.W.) exhibit true and accurate copies of certain documents on file and forming a part of the said Archives in this office.

In testimony whereof I have hereunto signed my name officially and affixed my private seal (not having a seal of Office) at the City of San Francisco this twenty third day of October 1853.
S. M. Wing
Sur. Gen. Cal.

Filed in Office August 8th 1853.
(Signed) Geo. Fisher
Secy.

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To His Excellency the Governor

Translation
of Exhibit
No. 2.

Angeles June 10th
1845.

Let this be for-
warded to Senor
Don Joaquin Ortega
that he as owner
of adjoining prem-
ises may state
what he knows
concerning the
subject, and to
the Alcalde of San
Diego that he may
give the appropriate
report,
Poco

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I, Agustin Olvera, a
Mexican by birth established
in the Department, before
the righteous Equity of Your
Excellency and in the most ap-
proved form of the Law, do
respectfully say,

That I have determined since
some considerable time ago to
change my domicile to the Town
of San Diego, which intention
I mean soon to carry out, and
I possess information that at a
distance of sixteen leagues more
or less from that place there
is a tract wholly unoccupied,
on account as well of its
remoteness as of its being
towards the Sierra, which

tract is known by the name of Cuyamaea,
And considering that its being occupied
will prove more profitable than the total
abandonment in which it now lies,
I beseech Your Excellency to grant it unto
me if it should meet your pleasure, for my
personal benefit and that of my family the
ownership of the same in conformity with the
Colonisation Law of the year of 24. I will
in due season present a sketch to represent
said tract, being prevented from doing so
at the precise moment, on account of the
engagements of my office. But I will
comply with the requisite as aforesaid,
I make oath &c. Be pleased to
excuse my using common paper, there being
none of the proper stamps in the place.

Angeles June 10th 1845
Agustin Olvera

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San Luis Rey June 18th 1845,

The tract known by the name of Cayamaen is bounded by the Sta Isabel and is absolutely unoccupied, and extends as far as the atay and part of the Valley of Las Viejas.

This is all I can state in consequence of the question made to me in consequence of the foregoing Superior's decree.

Jose Joaquin Ortega.

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Your Excellency

In attention to the foregoing Superior's Decree of your Excellency of the 10th of June last past, the tract solicited by the petitioner and known as Cayamaen is unoccupied and does not belong to either individual nor corporation for it is only inhabited by some heathens.

Wherefore it appears not to present any obstacle to your Excellency's being pleased to grant it to the petitioner if so minded.

San Diego, July 31, 1845.

Jose P. Arguello.

Angels August 11, 1845.

In view of the petition wherewith those proceedings originate, the reports made in the same together with all other things that were brought forward, and were proper to be kept in view.

In conformity with the provisions of the Law of 18th August one thousand eight hundred and twenty four and Regulations of 21st of November of one thousand eight hundred and twenty eight.

The Citizen Augustin Alvera is declared to be owner in full property of the tract called Cayamaen in the Jurisdiction of San Diego.

Let the appropriate title be delivered to the party interested and let it be noted therein that whenever he may be placed in judicial possession and the appropriate

EXCE
JUL 20

design may be formed the original of which must be annexed to these same minutes, the Judge delivering possession will forward to the Government a notice of the number of sitios it may contain. And let this grant be submitted to the approbation of the Most Excellent the Departmental Assembly.

I, Pio Pico, Governor ad interim of the Department of the Californias have so ordered decreed and subscribed, which I certify.

Pio Pico

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Angeles May 8 1846.

Submitted in Session of today these minutes to the Most Excellent the Departmental Assembly.

Ordered that it be referred to the Committee on Waste Lands.

Agustin Alvera S.D.

Excellent Sir!

The Committee on Vacant Lands has examined with care the following proceedings instituted on the motion of the Citizen Agustin Alvera relative to the tract Cuyamal, which was granted to him by the Superior Departmental Government in conformity with the laws affecting the matter.

Wherefore it submits to the deliberation of Your Excellencies the following proposition.

It approves of the grant made to the Citizen Agustin Alvera of the tract known as Sierra de Cuyamal in the jurisdiction of San Diego being in extent what is expressed in the 3rd Condition of the Title issued on the date of 11th of August 1845, agreeable to the law of the 18th of August 1824 and Article 5th of the Regulation of 21st November 1828.

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Angles June 3rd 1846.

In session of this day the Most Excellent the Departmental Assembly approved the resolution of the foregoing report.

Filed in Office Aug 8th 1853.
Geo. Fisher Sec.

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BYCE

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Doc No 76 No. 1
annexa to the
Deposition of
Wugo Reid.

76 No. 1

Pis Pies Vocal mas antiguo de la Honorable A-
samblea del Departamento de las Californias y
Gobernador Interino del mismo.

[Signature]
E. L. P.

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Por cuanto el Ciudadano Agustín Obvera ha
pretendido para su beneficio personal y el de su familia
el paraje conocido con el nombre de Cuya Maca en la
jurisdicción de San Diego; practicadas previamente las dili-
gencias y averiguaciones concernientes segun lo dispuesto
por leyes y reglamentos; usando de las facultades que me
son conferidas en nombre de la Nación Mexicana he venido
en decreto de este dia en concederle el espuesado terreno
declarandole la propiedad de él por las presentes letras
entendiendose esta concesion de entera conformidad con
las leyes, a reserva de la aprobacion de la Excmo Asamblea
Departamental y bajo las condiciones siguientes.

1^a Podrá usarlo sin perjudicar los comuneros y ser-
vidumbres lo disfrutara libre y esclusivamente dedican-
dolo al uso ó cultivo que mas le acomode.

2^a Solicitara del juez respectivo la de la posesion
juridica en virtud de este despacho por el cual se demar-
caran los linderos en cuyos lugares pondra el interesado
las mojones necesarias.

3^a El juez que diere la posesion lo hara medir conforme
á crumanga teniendo cuidado de que al tiempo de dar
dar la posesion se forme el diseño correspondiente y original
lo pase al Gobierno con la noticia del numero de sitios que
comprada.

En consecuencia mando que teniendo por firme y
validos el presente titulo setome cagon de el en el libro á que cor-
responde y se entregue al interesado para su resguardo y demas
fines.

Dado en la Ciudad de los Angeles a once de Agosto
de mil ochocientos cuarenta y cinco en este papel comun
por falta de sellado.

Pis Pico.

Jose M.^a Covarrubias
Srio.

Queda tomada razon de este Despacho en el libro
respectivo.

Covarrubias.

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Filed in Office Nov. 4th 1852.
(Signed) Geo. Fisher,
Secy.



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Jose A. Estudillo Juez 1.º de Paz del Pueblo de San Diego y su jurisdiccion.

Doc No No 2
Annexed to the
Deposition of
S. V. Argüello

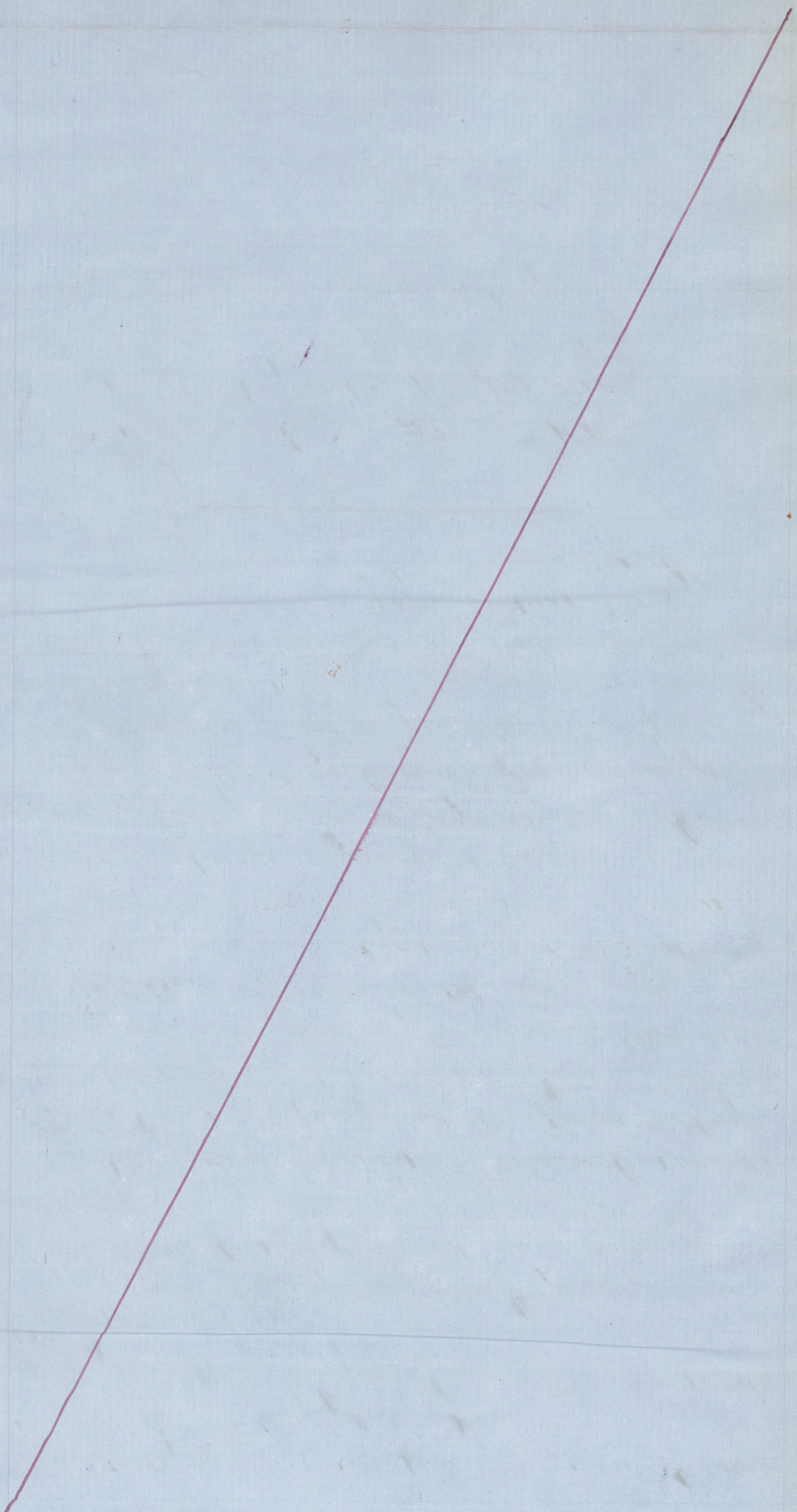
Certifico q. D. Agustín Oberra solicitó de mila posesi-
ón en posesion judicial del parage de Tuyamaca q. le
fue adjudicado p. el Superior Gobno y p. cuyo fin me
manifesto el titulo respectivo: mas a pesar de la buena dis-
posicion q. tiene no se pudo lograr la practica de este acto
a virtud de q. como han sido tan continuas las lluvias
habidas en la Sierra se encuentran aquellos campos
casi intransitables p. lo pantanosos de la tierra, pero me
consta ya p. vista y tambien p. mejores informes adqui-
ridos q. el referido parage de Tuyamaca es segun y
conforme el diseño formado y siendo q. siendo su estension
la de ocho sitios de ganado mayor los q. se remedia tan
luego como el tiempo mejore y la tierra preste comodidad
de fin de q. se haga con la debida exactitud y p. seguimiento
de la parte de D. Agustín Oberra y satisfaccion del Sup^{te}
Gobno obsequiando la tercera condicion del despacho de q.
este en el Pueblo de S. Diego en este papel comun p. fallado
sellado a 1.º de Abril de mil ochocientos cuarenta y seis.

Jose A. Estudillo.

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Filed in Office Oct 16th 1852.
(Signed) Geo. Fisher
Secy.

1000
1000



Doe "N.º 2"
Annex to the
Deposition of
Hugo Reid

Pio Pico Gobernador Constitucional del Depar-
tamento de las Californias.

[Decorative flourish]

La Exma Asamblea Departamental en
sesion del dia tres de junio ha tenido a bien decretar
lo siguiente.

Se aprueba la concesion hecha al Ciudadano
Agustin Olvera del paraje conocido Sierra de Cuyaca
en la jurisdiccion de San Diego en ostension
de lo que asienta la enjuncion 3^a del titulo librado
con fecha 11 de Agosto de 1845 con arreglo a la
ley de 18 de Agosto de 1824 y el art.º 5.º del re-
lamento de 21 de febrero de 1828.

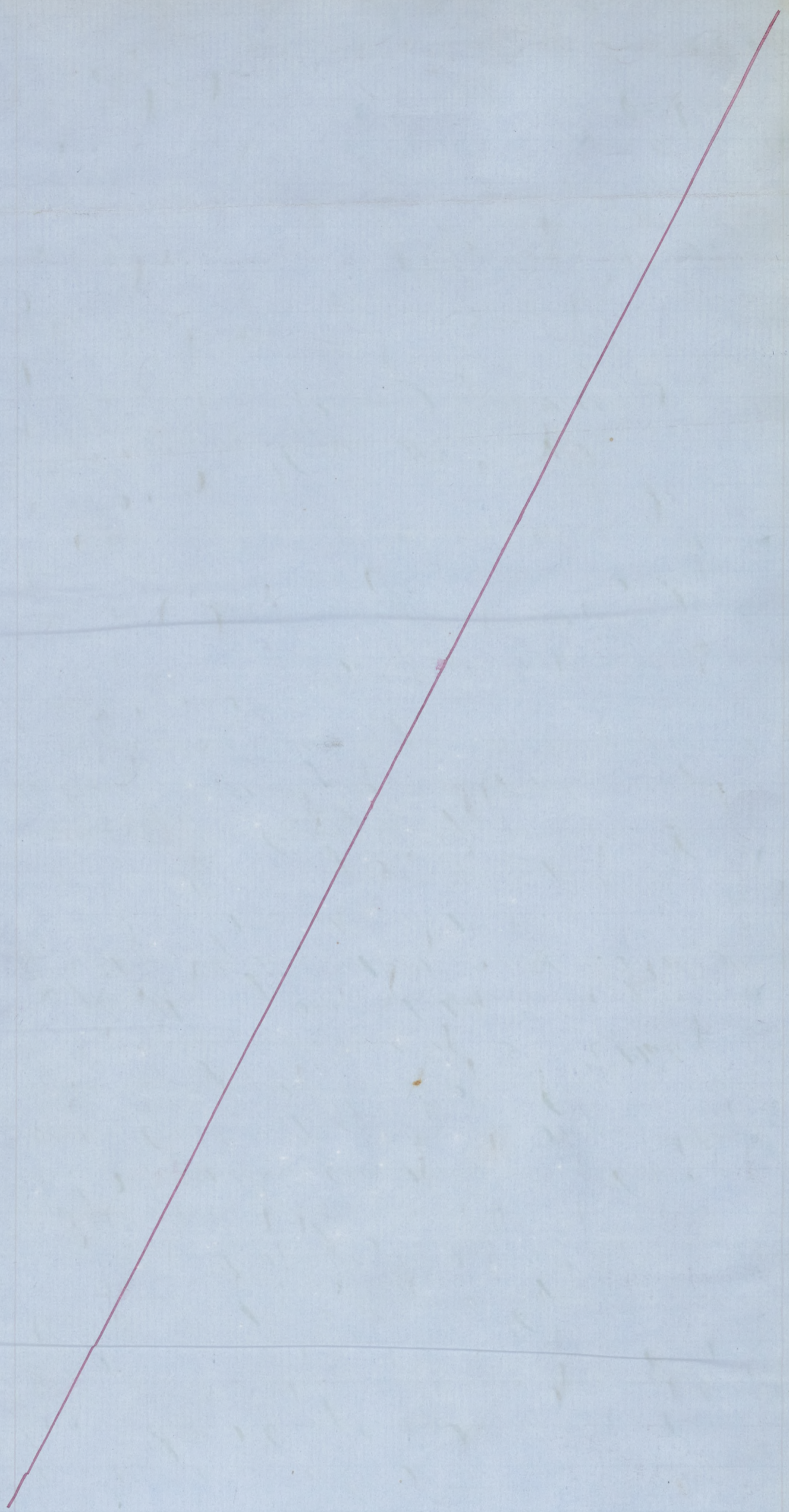
Y para resguardo de la parte del Ciu-
dadano Agustin Olvera lo hago asi saber. Dado en
la Ciudad de los Angeles en este papel comun por
faltu del sellado a seis de junio de mil ochocientos
cuarenta y seis.

Pio Pico.

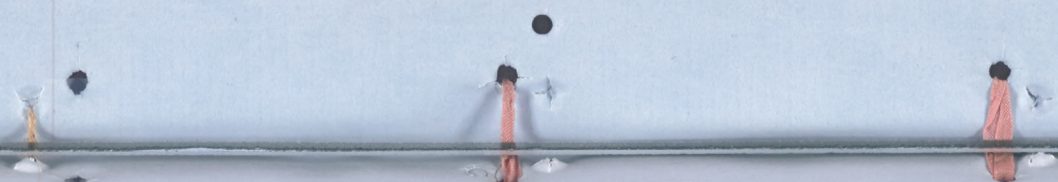
Jose Matias Moreno.
S. G.

Filed in Office Nov 4th 1853
(Signed) Geo. Fisher
Clerk.

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PAGE 24



1899
MAY 10



Pío Pico Senor Member of the Moral Assembly
of the Department of the Californias and Governor
ad interim of the said Department.

L. S.

Translation
Grant, Approval
& Certificate relating
to possession

Whereas the Citizen Augustin Alvarado
has claimed for his personal benefit
and that of his family the tract of
land known by the name of Leya Macca in
the Jurisdiction of San Diego, the proper proceed-
ings and investigations having first been instituted
according to the laws of Laws and Regulations,
In the exercise of the powers conferred upon
me, In the name of the Mexican Nation I
have come by decree of this day to concede to
him the aforementioned tract, I declaring the
ownership thereof to be in him by these present
Letters; this grant being understood
to be in entire conformity with the laws under
reservation of the approbation of the Most Excellent
Departmental Assembly and the following conditions:

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PAGE 25

1. He may fence it without prejudice
to the roads and rights of way; he shall enjoy
it peacefully and exclusively, devoting it to such use
or culture as best may suit him.

2. He shall petition the Judge who
has jurisdiction to give him the judicial pos-
session in virtue of this grant.
The said Judge shall mark out the respective
boundaries on the lines whereof the party
in interest shall place the necessary land
marks.

3. The Judge who may give the
possession shall cause it to be measured
according to ordinance taking care that at the
time of giving the possession, the sketch
of the same be drawn out and forwarded in
the original to the Government with information
as to the numbers of sitios it contains.

Wherefore I order that the present
title being held firm and valid, be entered
of record in the appropriate Book and delivered
to the party in interest for his protection
and other ends.

Given at the City of Los Angeles on the

11th of August one thousand eight hundred and forty five on this common paper for want of the stamped.

Pio Pico
Jose M^a Covarrubias
Secretary

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This grant is entered of Record in the appropriate Book.

Angeles, same date as above
Covarrubias.

The Plan.

Secretarys Office

E. L. S. I, Jose Matias Moreno, Secretary of the Government of the Department of the Californias: Do certify that the plan sketched on the other side of this sheet is a faithful and literal copy of that filed with the minutes of proceedings instituted with respect to the Tract of Cuyamaca in the Office under my charge.

Angeles 9th June 1846.
Jose Matias Moreno
Sec pro tem.

I, Jose a Estudillo, First Justice of the Peace of the Town of San Diego and its jurisdiction.

Do certify that Don Agustin Alvera made petition to me that I should place him in Judicial possession of the Tract of Cuyamaca which was adjudicated to him by the Superior Government, for which end he exhibited to me the Title relating thereto. But in spite of the good intention I entertained it was not possible to carry such Proceeding into effect, because

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PAGE 27

the rains have been so continual in the mountains that those lands are almost impassible on account of the swampy condition of the soil. But I Runy as well by personal inspection, as by the best information I could require that the said Tract of Cayamaea is conformable and in accordance with the design drawn and is of the extent of eight ranges (sitios) for neat Cattle which shall be measured over as soon as the weather improves and the soil presents facilities for the same to be done with due exactness.

And for security on the part of Don Augustin Alvera, in obedience to the Superior Government and in fulfillment of the third condition of the Grant, I give this at the Town of San Diego on this common paper for want of the stamped on the 12th of April one thousand eight hundred and forty-six. Jose A. Estudillo.

Pío Pico, Constitutional Governor of the Department of the Californias.

The Most Excellent the Departmental Assembly in session of the 3rd day of June, has said fit to decree the following:

Approved the Grant made to the Citizen Augustin Alvera of the Tract known as Pina de Cayamaea in the Jurisdiction of San Diego, being in extent what is set down in Condition 3rd of the Title granted under date of 11th of August 1840, Agreeably to the laws of the 18th of August 1824 and Art 5^o of the regulation of the 21st November 1828.

And for protection on the part of the Citizen Augustin Alvera I do make

is known Given in the City of Los Angeles on this common paper for want of stamped on the 6th of June one thousand eight hundred and forty six.

Pio Pico

Jose Matias Moreno
Sec protest

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Filed in Office Oct. 6th 1852
Geo. Fisher Sec

From Los Angeles

Case No. 375,

Agustin Alvera of "Cuyamaca", claim for
vs
The United States of 11 Leagues of land in San
Diego County,

Opinion of
the Board by
Commissioner
R. Aug Thompson.

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This claim is founded on a grant made by Pio Pico Senior Member of the Departmental Assembly and Governor ad interim of the Department of the Californias, dated the 11th of August 1845 and approved by the Departmental Assembly on the 3rd of June 1846.

The documentary evidence filed in the case consists of the original grant, and certificate of approval, a certified copy of the map contained in the Expediente, and a certificate of Jose A. Estudillo in relation to Judicial possession.

The authenticity of all these documents and the genuineness of the signatures attached to them are duly proven by the depositions of Santiago E. Arguello, and Hugo Reid.

The grant in this case is simply for the tract of land called Cuyamaca without any description or designation of boundaries by which the particular parcel of land intended to be granted can be identified or the quantity ascertained. The condition of the grant in which the quantity is usually specified, and reference sometimes made to the design or map attached to the Expediente contains in this case no such provisions but directs the Judge who shall give the possession to cause the land to be measured according to the ordinance, and a sketch of the same to be drawn out and forwarded in the original to the Government with information of the number of "sitios" (square leagues) it contains.

The first and most material question presented in this case is whether the description contained in the grant is sufficient to give it validity and invest

the grantee with the right of private property in any particular parcel of land. In the case of Blake et al, vs Robert et al, 5 Wheatons 359 Chief Justice Marshall lays down the principle

"That it is essential to give validity to a grant that there should be a thing granted, which must be so described as to be capable of being distinguished from other things of the same kind. But it is not necessary that the grant itself should contain such a description as, without the aid of extrinsic testimony, to ascertain precisely what is conveyed" and Chief Justice Taney in the case of the United States vs King et al, says it has been settled by repeated decisions of this Court, and in cases too where the instruments contained clear words of grant, that if the description was vague and indefinite, and there was no official survey to give it a certain location it could create no right of private property in any particular parcel of land. See 5th Howard's P.P. 786 & 787 and the cases there cited.

Again in 1st Greenleaf Evidence Sec 301 we find the general principle asserted that of the land granted be so accurately described as to render its identity wholly uncertain, the grant is void. Applying those principles to the present case it is very clear that the title in which this claim is founded, although it might contain words of grant and all the essential formalities required by the law, could convey no right of property to the grantee in the land in question.

The name Cuyamaca by which the land is designated in the grant, is the only description which it contains.

It is true a grant by the name above might be valid but to render it so it should be accompanied, by reference to some extrinsic evidence going to show

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X

the existence of a locality known by that name, and identifying its by certain and well defined bounds and limits,

There is no such evidence in the present case; the proof in that point is as vague & uncertain as the grant itself - And in reference to the quantity exceedingly contradictory.

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PAGE 31

The Expediente contains a map, a certified copy of which is filed with the proof in the case which represents the land as an extensive plain in nearly a square form surrounded on all sides by Sierras, or High Mountains and containing according to the scale of Varas laid down on it some thirteen or fourteen square leagues.

Santiago Arguello in his description states the quantity at nine or ten square leagues. The Justice of the Peace Estudillo in his Certificate in reference to the Judicial possession fixes it at eight, while the Claimant in his petition to the land claims it as containing eleven.

The map is evidently a mere fancy sketch made probably by one who never saw the land, and with little or no reference to the natural sections of the country where it lies. That it was so considered by the Governor where he made the grant is to be inferred from the fact that he takes no notice of it whatever, and directs the officers giving the possession to make another from actual measurement, and return it together with a statement of the quantity of the land to the Government.

The performance of this act was clearly a condition precedent a compliance with which was essentially necessary to give validity to the grant; without it there was nothing tangible on which it would operate; nothing by which the land granted could be distinguished from others of the same kind, and no other

reference to any extrinsic means of identification by which they could be ascertained and located; until it was done therefore the grant must be considered incomplete, inoperative and void. The Supreme Court has decided in numerous instances that cases of this character must be decided with reference to their condition at the time the change of jurisdiction took place.

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PAGE 32

It has not yet been necessary for this Commission to decide for what period this limitation date, nor is it so in the present case, as there is no evidence to show that this material condition of the grant has even been complied with. Under the rules of law as laid down by the Supreme Court and quoted above and the evidence in the case, we are led to the conclusion that the grant is void for uncertainty, and no right has ever vested in the Claimant, under it.

The Claimant has introduced the Certificate of the Justice of the Peace, to whom he applied for the Judicial possession and measurement, setting forth certain reasons why he was prevented from giving it.

From the views above presented it is apparent that this paper is not entitled to any weight or consideration in the decision of the case.

It has already been shown that the act required by the 3rd condition of the grant was a condition precedent and its performance undisputably necessary to give it validity.

Whether therefore the failure of the Claimant to comply with it, was occasioned by his misfortune or his fault, cannot in any degree influence or control the legal effect resulting from it. The claim is therefore rejected.

Filed in Office April 4th 1854 Geo. Fisher, Secy.

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Case No. 375.

Agustin Olvera }
The United States } Cuyamaca

Decree of
Rejection.

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In this case on hearing the proofs and Allegations it is adjudged by the Commission that the claim of the Petitioner is not valid, and it is therefore decreed that his application for a Confirmation thereof be denied.

Alphens Delch
Thompson Campbell
R. Aug. Thompson
Commissioner

Filed in Office April 4th 1854
Gen^l Fisher
Sec

DEPT. OF THE ARMY
WASHINGTON, D. C.

34.

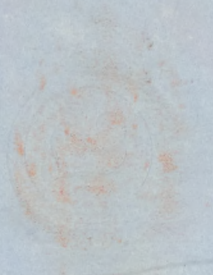
And in appearing to the satisfaction of this Board that the land hereby adjudicated is situated in the Southern District of California it is hereby

Certified

Ordered, that Two Transcripts of the Proceedings and of the Decisions in this case and of the papers and evidence upon which the same are founded, be made out, and duly certified by the Secretary, one of which Transcripts shall be filed with the Clerk of the United States District Court for the Southern District of California, and the other be transmitted to the Attorney General of the United States

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Office of the Board of Commissioners,

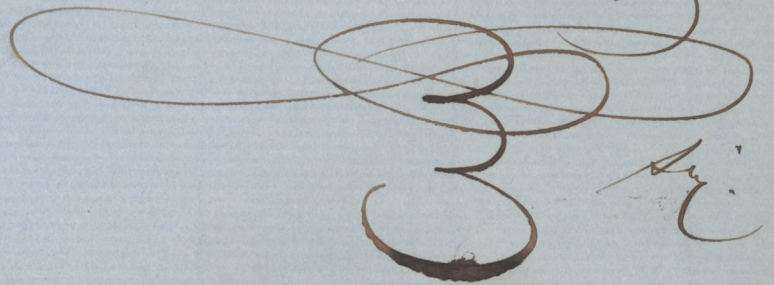
To ascertain and settle the Private Land Claims in the State of California.

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
going *thirty four* pages, numbered from
to *34*, 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. *375* on the Docket of the said Board,
wherein *Agustin Olvera* is

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

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

Geo. Fisher



124

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

No. 124. Docket

THE UNITED STATES,

124

vs.

Agustin Overa.

For Cuyomaca.

TRANSCRIPT OF THE RECORD

FROM THE

BOARD OF U. S. LAND COMMISSIONERS,

In Case No. 370

Filed, *November 8th* 1854

J. E. Farr.
Clerk.

124

Clerks office of the District Court }
of the United States for the Southern }
District of California.

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Whereas the commissioners con-
stituted for the purpose of ascertaining and
settling private land claims in the State
of California by the act of congress of the U.
S. of America approved on the 3rd of March
1853, entitled: "An act to ascertain and
settle the private land claims in the State
of California"; did on the 4th day of April
eighteen hundred fifty four by their decision
of that date decide against the claim
presented by the undersigned to the said Com-
missioners, which claim is for land lying
in the said Southern District and is numb-
er three hundred seventy five (375) on
the docket of claims before said board -
and the said claimant being desirous that
the said District Court should review the
said decision, - Now hereby files this
notice in the said clerks office of his
intention to prosecute an appeal, as is
provided by the 12th Section of an act
entitled: "An act making appropriations
for the civil and diplomatic expenses of
the government for the year ending the 30th
of June 1853, and for other purposes",
which said act was approved on the 31st of
August 1852.

To the Clerk of the U. S. }
District Court of the Southern }
District of California 5th April }
1854.

Agustin Olvera
by C. V. Crosby
of Counsel.

~~No. 124~~ No. 124.
U. S. District Court
Southern District

No. 375.
Agustin Olvera
Appellant
vs
The United States
Appellee.

Notice of Appeal.

No. 12

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Filed April 10/34
A. S. Taylor
Clerk

X 8.

E. O. Crowley
of Counsel.

U.S. District Court, Southern District
of California

Agustin Ochoa }
 as appellant } No. 124.
The United States } (Transcript No. 375.)
 as appellee }

On motion of Claimant's Counsel
with the assent of the District Attorney of the U.S. It is
ordered that further testimony may be taken in this
cause by either party.

Dated Los Angeles, Sept. 27th 1855.

E. P. Crosby Counsel
for Claimant
Ford
Dist Atty.

No. 124.

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

Agustin Ochoa
as appellant

The United States
as appellee

Order to take further testimony

2

Filed Sept 29th 1855

J. E. Carr
Dist Atty.

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E. P. Crosby
Attorney for appellant

The United States.

appellee

vs.

No 124.

Agustin Olvera.

Appellant.

124 SD

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Deposition of Jose Loaguin Ortega, a witness on the part of appellee, taken before me Chas. E. Carr, U.S. Commissioner for the Southern Dist of California, at the City of Los Angeles, Sept 28th 1855. Present P. Ord, atty of the United States, and E. O Crosby, atty for appellant. Wm J. Dryden was sworn as interpreter.

Jose Loaguin Ortega, being by me duly sworn answers as follows.

Ques. 1. What is your name, age, and place of residence

Ans. — My name is Jose Loaguin Ortega, my age 5th years — my residence in the County of San Diego.

Ques. 2. Do you know the Rancho of Cayamaca, if yes, where is it situated and what are its boundaries (as regards proof of boundaries, objected to by U.S. Atty)

Ans. — I know the Rancho of Cayamaca, it is situated in the County of San Diego, about ten or twelve leagues from the Town of San Diego, in a northerly direction from San Diego. It is bounded on the south by the Puertecuela, which opens into the Valley of the Viejas — on the North by the Sierra of Cayamaca, and Ygnais on the East by the Sierra of Lacum, on the West by the Rancho of Santa Ysabel following the low hills, until it reaches

the Southern boundary

PAGE 124 SD 40

Ques 3. How long have you known the Ranch of Cuzamaca, and ~~do you reside in reference to it?~~

Ans. - I have known it since the year 1829.

Ques 4. - What have been your means of knowing said Ranch

Ans. - at one time I resided on the adjoining Ranch of Santa Isabel. I have been over the Ranch frequently and I know the boundaries from personal observation (~~as shown~~ ~~apparently by U.S. Atty.~~)

Ques 5. Is the Ranch Cuzamaca well known and notable location?

Ans. - Yes it is -

Ques 6. What do you know of its occupation by Agustín Obera, and servants?

Ans. - All that I know is, that I saw mares ~~belong~~ driven there - I do ~~not know~~ and know that they belonged to Don Agustín Obera - I don't remember the time -

Ques 7. Was it before or after the occupation of the Country by the United States Troops

Ans. - It was before -

Ques 8. About how long previous -

Ans. - I think it was about 1842, or 1843.

Ques 9. Were there any houses or corrales built upon the Ranch by Obera or persons in his employ?

Ans. - I do not know -

Ques 10. Do you know Jose A. Estudillo and where does he now reside?

Ans. - I know him to be dead.

Ques. 10. Do you know Jose A. Estudillo
and where does he now reside.

Ans. — I knew him. he is dead. He
died about two years ago, in San
Diego.

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PAGE 41

Ques. 11. State what Office, if you know,
which he held under the Mexican
Government in 1844, 45 & 46.

Ans. — In 44, I don't know, but in
1846, I think he was a Justice of
the Peace for the jurisdiction of
San Diego. He exercised the functions
of a Justice of the Peace.

Ques. 12. — Do you know of Alvera's
having any other cattle beside the
names you spoke of.

Ans. — I do not.

Cross-examined by U.S. Atty.

Ques. — Why was the place called Cuyamaca

Ans. — It was called so by the Indians from
the earliest times.

Ques. — Did the Indians live on the
place in Rancharias, if so, state
where they were.

Ans. — Yes. Some lived in Aguatay in
a Rancharia, and at Yguai. There
were the permanent Rancharias.

Ques. — How far apart were those two
Rancharias?

Ans. — About five leagues more or
less.

Ques. — Do you know the place of Cuyamaca,

Ans. — Yes.

Ques. — Was there not a place

near the Raucheria of Yguai, called Cuyamaad.

Ques. — I do not know of any particular Raucheria called Cuyamaad. Yguai and all the country around there I know as Cuyamaad.

Ques. — Was there or not a Raucheria on the land called Cuyamaad.

Ans. — I have heard it said by the Indians that in early time there was a Raucheria called Cuyamaad.

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PAGE 42

Ques. — Do you where the that Raucheria was located.

Ans. — It was at the foot of the Hill called Cuyamaad.

Ques. — In what direction was it from this Hill.

Ans. — It was toward the ^{where the sun rises} east.

Ques. — In what direction is the Raucheria of Yguai from the Raucheria of Cuyamaad?

Ans. — It is very near, towards the south.

Ques. — Do you ^{know} the names of any other places on the land, besides those you have before stated.

Ans. — I do not remember.

Ques. — When were you last on the land?

Ans. — In the year 1845.

Ques. — Was it inhabited at that time by any person?

Ans. — It was not.

Ques. — Did you ever see a map of the Ranch — if so when did you first see it.

Ans. — I have never seen any before until now when it was shown

me on the examination in Chief by Claimant.

Ques. — ~~Was~~ Was this place of Cayumase ever occupied as a Rancho with Cattle ~~of 20,000~~ by whom, and when —

Ans. — Before I was told it had been occupied long ago before I was born — by the Mission of San Diego —

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Ques. — In 1845. when you went to the place were the Ranchos occupied by Indians, if so, by about how many

Ans. — They were by about seven or eight families —

Ques. — Did you ever see any bands of breeding mares occupying the Ranch, if yes, when and in what manner

Ans. I never have

Jose Joaquin Ortega

Sworn to and Subscribed before me this 28th of Sept 1855.

J. E. San.
U.S. Court.

N^o 124
in
United States

ads

Augustin Alorda

3

Filed Sept. 25th ad 1855.

at S. Cancll
By John W. King

Deposition of Jose Joaquin

Ortega - a Witness for

(Appellee.)

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Myrd

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15.0
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18.50

U. States District Court for the
Southern District of California

No. 124

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PAGE 45

Agustin Norra.

vs.

The United States.

} Appeal by Claimant.
} No. 375, in Land Commission.

In this case it having been ordered
by the Court that the transcript be returned by the
Clerk of this Court to the Clerk of the Land Commission
in order that the same may be amended, it is hereby
stipulated and agreed that no right of the United
States or of the Claimant is to be affected by said
order in any respect.

Los Angeles Oct. 5th 1855.

E. S. Crosby, Counsel
for Claimant.

P. Ordóñez atty ad.

No 124

Augustin Clovea

vs

The United States

~~Order~~

Stipulation

Filed Oct 5th 1855

CC Law 215

By Geo. H. [unclear]

5

No. 124.

Agustin Olvera

vs

The United States

U States District Court for the

Southern District of California

"Cuyamaca"

124 SD

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In this case it being suggested by
Counsel for appellant that the transcript of the
Record from the Land Commission is imperfect
It is ordered by the Court, the District Attorney being
present and consenting thereto ^{by stipulation} that the original
transcripts be returned to the office of the Secretary
of the Commission, by the Clerk of this Court, that
said transcripts may be amended or that a
perfect copy of the original documents may be
submitted to this Court.

N^o 124

Augustin Olorra

05

Quinta Status.

Ordu

4

Filed Oct 3rd 1855

O. E. Carratt

By W. P. P. P.

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In the United States for the
Southern District of California

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Agustin Olvera }
vs } No 124.
The United States } Transcript No. 375.

To the Hon^{ble}. Isaac S. R. Ogier, judge

The petition of Agustin Olvera the claimant and appellant in this cause respectfully represents that on the 6th day of October A.D. 1852. the appellant Agustin Olvera petitioned the Board of U. States Land Commissioners, claiming Eleven Square leagues of land called Bayamaca in San Diego County, California and situated within the former jurisdiction of San Diego California. That on the 4th day of April 1854 the said commissioners rejected the said claim. That on or about the 10th day of April A.D. 1854. this appellant by his Counsel caused a notice to be filed in the office of the clerk of this Hon^{ble}. Court of his intention to prosecute an appeal in this cause from the decision of said commissioners. That on the 8th day of November A.D. 1854. the said commissioners caused a transcript of their proceedings and decision in said cause to be filed in the office of the clerk of this Hon^{ble}. Court, and that on the same day the said notice heretofore filed and remaining in the office of the clerk of this Hon^{ble}. Court of the intention of this appellant to prosecute an appeal in this cause, became operative as if said notice had been filed on the said 8th day of November A.D. 1854 the day of the filing of said transcript. That the land claimed

is in the Southern District of California and within the jurisdiction of this Court; and is of the extent of Eleven Square leagues within the natural boundaries of Sierra de Guaymas on the north; Sierra de Sacapim on the east; the Sierra and Valle de las Vigas on the south; and the Sierra and Rancho of Santa Isabel on the west;

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Therefore this petitioner prays that the said decision of the said Commissioners may be reviewed reversed and set aside and that this Hon^{ble} Court will deem the said claim or title to be valid to the extent of Eleven Square leagues of land within the boundaries herein before set forth, and set forth in the said transcript and testimony in this cause provided there be no more than the said Eleven ^{square} leagues within the said boundaries, but if there be more than the said Eleven leagues within the said boundaries then only to the extent of Eleven Square leagues, and for general relief in this cause by such other order, judgment or decree as shall be agreeable to law and equity.

E. S. Crosby, of counsel
for appellant.

No. 124

U S District Court for the
Southern Dist of California

Agustin Olvera

vs

The United States.

Petition of appellants.

6

Filed Dec 10th 1855

W. H. May
Clerk.

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E. J. Crosby. et

Counsel for appellants

UNITED STATES OF AMERICA, } SS.
Southern District of California,

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TO

The President of the United States,

J. Ord. atty. of the U.S. for the South. Dist. of Cal.

Greeting :

Take Notice, That a Petition, a copy of which is herewith served upon you, has been filed against *United States* in the District Court of the United States, in and for the Southern District of California, on the *18th* day of *December*, in the year of our Lord one thousand eight hundred and fifty-*five*, at the City and County of Los Angeles, in said District, by

Augustin Olvera praying ^{the} said Court to review the decision of the U. S. Land Commission affecting his claim to a tract of land called "Cuyamaco"

and that *you* are required to appear at said Court, in said City, within ten days after the service hereof, if served on you within the County of Los Angeles, and within twenty days if served on you in the County of San Diego or San Bernardino, and within forty days if served on you in any other County of said State, exclusive of the day of service, and answer said Petition, or the Petitioner will apply to the Court for the relief demanded therein.

In Witness whereof, I have hereunto set my hand, and affixed the Seal of said Court, at the City of Los Angeles, this *11th* day of *December* A. D. 185*5*.

C. E. Farr,

CLERK.

No. 124.

UNITED STATES OF AMERICA,

Southern District of California,

U. S. DISTRICT COURT.

Agustín Obera

vs.

The United States.

SUMMONS.

Received Dec 11th 1855

Edward Hunter
U. S. Marshal

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Marshal's Office
Copy my summons - by
Loring
Petitioner

I served this Summons, together with a certified copy of the Petition, upon *Pacificus Old*
U. S. Attorney, by delivering to him personally
a true Copy of the same.

at *the City of Los Angeles* in the Southern District of California, on
the *11th* day of *December* A. D. 1855.

Sworn to and subscribed before me, *this 11th*

9 Dec 1855

[Signature]

CLERK.

Edward Hunter

U. S. MARSHAL.

fr M E Goodman
Deputy

In the District Court of the United States for the
Southern District of California, Los Angeles December
Term 1855. Hon. Isaac S. H. Ogier - Judge -
Agustin Olvera } on appeal from the Commission
vs } to ascertain & settle private land titles
The United States } in California

No. 124.

Transcript No. 375.

The answer of Pacificus Bid attorney of the United States
for the Southern District of California for and in behalf
of the United States, to the petition of Agustin Olvera for
review of decision of United States Land Commission,
says; That he denies all and singular each and every
allegation in said petition contained, and further this
respondent denies generally the validity of the alleged
~~claim~~ title of the claimant to the land claimed by him -

and the said respondent prays that this Hon. Court will affirm the decision of the said United States
Land Commission in said case, and decree the said
alleged title to be invalid, and general relief -

P. M.
Att. of the U. States
for the Southern Dist.
of California.

I have served this Answer on Augustin Olvera by delivering to him personally a true copy of the same at Los Angeles this 26th of December 1855

Edward Hunter
U.S. Marshal
By M. S. Goodman
Deputy

No. 124

Transcript No. 3757

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

Augustin Olvera,

vs

The United States

answer, of No. 124

Filed Dec 14th 1855

J. S. G. L. M.
E. H. K.

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J. M. S. G. L. M.

Marshals Cost
for Serving Answer 2.00

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

N^o 124-

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Augustine Olivero
vs

The United States

Now on this day

the said Claimant comes and
moves the Court to grant a
rehearing in the above case
upon the ground that the
Claimant will be able
to procure the necessary testimony
to meet the objections to the
Confirmation of the claim of the
said Olivero to the place called
'Cuyomaca' as will appear by his
affidavit which is the foundation
of this motion

A Thomas
Atty for Olivero

No 124

SD

U S Dist Ct S Dist

Augusta Olevera

vs

The United States

Motion for
rehearing

9

Filed Dec 31st 1885.

124 SD

PAGE 57

f. E. Carr
clerk.

A Thomas

atty for Olevera

In the District Court
of the United States
for the ~~Southern~~ District of
California

No 124

124 SD

PAGE 58

Augustin Olevera
vs
The United States

The said Augustin
Olevera being duly sworn
deposed and says that he
had supposed sufficient evidence
had been adduced in this case
to identify the land herein claim-
ed and authorized a confirmation
of the same by this Court, but the
Court having rejected the said
claim to said land on account
of a want of identity of the
same this appellant says that

in the event that the Court will
open the case by granting a new
trial herein and thereby give the
opponent an opportunity to do
so he will produce ample ^{evidence} of
the identity of the land claimed
by the name of "Cayomaca"
its locality that it has certain
and well defined bounds and
limits and quantity that the
testimony to the effect above
stated can be produced before
a hearing may be had after
the granting of a new trial
sworn to and subscribed *Agustín Obeso*
before me this 31st Decr
1886 - J.E. Carr. }
U.S. Court }

No 124

In Dist Ct U.S.

Augusta Olevana

vs

The United States

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Applicant for
new trial

10

Filed Dec 31, 1855.

J. E. Carr
Clerk

a Thomas

Atty for client

In the district court of the United States
for the Southern district of California.

Agustin Olvera
Appellant } Case No.
vs }
The United States } "Cuyomaca"
Appellee }

And now at this day comes the
said appellant by his attorney and
moves the court that the above cause
be continued until the next regular
term of this court - said motion is founded
upon the following affidavit

Amos Norton
Atty for Appellant

State of California
San Angelo County ss.

Agustin Olvera the above
named appellant being duly sworn
says that a new trial was granted in
this case on the 31st day of December
A.D. 1855, and that immediately thereafter
this deponent sent to San Diego to procure
the attendance of material & necessary
witnesses, to wit, William Williams, Jose
Antonio Pico & Lorenzo Soto, at this
term of this court, in order to define
more particularly the natural boundaries

of the lands claimed in this case, that said witnesses have not as yet appeared before this court, and deponent believes that he will be unable to procure their attendance, at this term of the court. Deponent believes & is advised that he has a good and valid ^{title} ~~claim~~ to the lands claimed in this case, and that he will be able to procure the attendance of said witnesses at the next regular term of this court, and that this application is not made for delay but that substantial justice may be done in the premises.

Agustín Olvera

sworn to & subscribe to this
21st day of Feb. 1856, before me

J. E. Jan
Justice of the Peace

No. 124

U. S. District Court

South District of California

Agustín Olvera

Appellant

vs

The United States

Appellee

Mo. & afft. for continu-
ance.

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Filed Feb. 21st 1856

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J. E. Jan
Justice of the Peace

Boston

Depositions of J. J. Warner taken before C. Sims United States Commissioner for the District of California, at the United States Court House in the City of Los Angeles on Friday the fifth day of December 1856 at 4 O'Clock P. M. by Consent and agreement of parties, to be used as testimony on behalf of the Claimant in a certain Cause now pending in the U. S. District Court, for the Southern District of California, being Case No. 124 on Docket of said Court, wherein Augustin Alvera is Appellant and Claimant and the United States Appellee, present Pacificus Ord. U. S. Attorney and E. A. Crosby Esq. Attorney on behalf of the Claimant and Appellant

J. J. Warner being duly sworn deposed
and says

I have resided in California since
Oct 1831 in the Counties of Los Angeles and San
Diego, am now a Resident of the latter County

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PAGE 64

I am acquainted with the Place called
"Cuyamaca" It is situated in the County
of San Diego, 5 1/2 miles north easterly from
the Town of San Diego, I have known it since
1844 having resided within a few leagues of it
since that time - It is a track of Land ~~near~~
near the Summit of the Mountain Ridge
which separates the Waters flowing directly
into the Pacific Ocean from those flowing
directly to the Rio Colorado - The Waters of this
tract of land flow off South West of the Land

This tract of land was universally known
by the Inhabitants in that Section of Country by
the name of Cuyamaca and is still known
by that name, I have heard it spoken of
from the time I came in the Country (1831) as
the track of ~~land~~ Cuyamaca - It is at this
time a well known track of land and can be
easily found and identified

Cross Examination by Plea W. Slaty

From the land of San Ysabella on the north west
to the lands of Valle Viejas I should judge to be about
10 ten miles - From the Mountain of San
Filipe on the north east East in a South Westly
direction about 9 or 10 miles - There is
a prominent mountain well known
as Cuyamaca lying on the North West
border of this tract

Shown and subscribed

to before me this 5th

day of Dec 1857

J. J. Warner
U S Commissioner

State of California }
County of Los Angeles }

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J. C. Sims, United States
Commissioner for the District of California, do
herby Certify that the ~~following~~ ^{foregoing} deposition of J. J.
Warner was taken before me in accordance
with the request and agreement of said attorneys
at the United States Court House in the City of
Los Angeles State of California. That the said
J. J. Warner was by me duly sworn according
to law as a witness in said Cause in the Caption
of this deposition mentioned, and after being so
sworn; his testimony was by me reduced to writing
in his presence and that of the said attorneys and
after having been by me carefully read to him and by
him corrected as he desired, was by him signed
in my presence



In testimony whereof I have
hereunto set my hand and ^{privately} Seal
~~the type of an official seal~~
of said Court this 5th day of
December A. D. 1856.

J. C. Sims
United States Commissioner
for the Dist. of California

No 124

W Dist Court

Augustus Olson

vs

The United States

Deposition of A. Warner

Filed this 8th day of Dec
1884

C. J. Sims
clerk

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paid for

Agustín Olvera

appellant

124 SD

Case No.

124

PAGE 67

The United States, appellee

Deposition of *José Antonio Carrillo*

taken before C. SIMS, United States Commissioner for the District of California, at the United States Court House, in the City of Los Angeles, on *Tuesday*, the *20* day of *January* A. D. 185*7*, at *10* o'clock *A* M., on said day, on behalf of the *appellant* by the *consent and agreement of the attorneys of the parties* to be used as testimony in a certain cause now pending in the *US Dist Court for the Southern Dist of California* being Case No. *124*, on the Docket of said Court, wherein *Agustín Olvera* is ~~an~~ *appellant*, and *The United States* are appellees.

Present

J. C. Crossley

Attorney on behalf of the appellant

and

Frank E. Usaty

on behalf of appellees.

Agustín Chirra

appellant

vs

N. 124

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The United States

appellee

José Antonio Cavillo being duly sworn on the part of the appellant, deposes and answers as follows,

Question What is your name, age and place of Residence?

Answer My name is José Antonio Cavillo, my age is 61 years, I reside in Los Angeles County, and I have lived in this County 35 years; from 1807 to 1819 I lived in San Diego.

Question Do you know a place or Rancho called Cuyamaea, claimed in this case?

Answer I do know a place called Cuyamaea. I mean a tract of land.

Question Please state where it is situated and how long have you known it?

Answer I believe it is in the County of San Diego near the Rancho of Santa Isabel, it is about 40 years since I knew it, being then upon it, at a place where the government had placed a few troops and a quantity of horses.

Question What means have you had for knowing this place?

Answer In or about the year 1814 the Military Commandant of San Diego having obtained

4 4 4 4 4 4

permission from the minister of the Mission of San Diego to place the horses belonging to that Military department upon said tract of land, a number of the inhabitants of San Diego, and myself as one of them in consequence of the ~~existence~~ extreme drouth & scarcity of pasture, asked and obtained permission from the Military Commandant to put their horses upon said tract of land. I then went there taking with me about 20 horses, which I delivered into the keeping of the Military officer stationed at that place, agreeable to the order of the Commandant at San Diego.

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Question

Is it a well known locality, and has it been so known for the last 100 years

Answer

It is a place or tract of land well known by the name of Cuyamaca, it was well known 140 years ago and has continued to be known by that name up to the present time. There is no other tract of land or place in the present County of San Diego except this one which has ever been known by the name of "Cuyamaca"

Compl. Affirmation by
W. S. Atty,

Question

Have you any interest present or contingent in the Land claimed in this case

Answer

No, I have not
I am pleased to inform you
this 21st day of May 1837
J. Carrillo

José Ant. Carrillo

I, C. Sims, of the City and County of Los Angeles, and State of California, Commissioner to take Affidavits and Bail, in civil case pending in the Courts of the United States, and Depositions under the Acts of Congress, approved September 24th, A. D. 1789, February 20th, A. D. 1812, and March 1st, A. D. 1812, by virtue of my office of Clerk of the United States Court of the Southern District of California, and by special appointment by the United States Circuit Court for the State and circuit of California, do hereby certify that the foregoing

Depositions of *Jose Antz Carrillo* was taken before me on the *20* day of *January*, A. D. 185*7*, according to the *agreement and request of the attorneys* of the said *parties*

at the United States District Court House, in the City of Los Angeles, and State of California, on behalf of the *Appellant*

That the said *Jose Antz Carrillo* was by me duly sworn according to law as a Witness in said cause in the caption of this Deposition mentioned, and after being so sworn, his Testimony was by me reduced to writing in his presence, and after having been by me carefully read to him, and by him corrected in every particular as he desired, was by him signed in my presence.

In witness whereof, I hereunto set my hand and private Seal, (having no Seal of Office,) this *20* day of *January*, A. D. 185*7*

C Sims

United States Commissioner.

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No. 124

United States District Court for the
Southern District of California.

Agustín Olvera
app'tt
vs
The United States
app'ellus

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Deposition of

Suic Ant. Carrillo

Filed this

21th January 1857

testis etc.
J. McLeoman
Deip

United States District Court for the
Southern District of California

The United States
appellus.

Transcript No. 124.

ads.

Agustin Olvera appellant

It is hereby stipulated by the U.S. District
Atty. and Claimant's Counsel that the transcript
in Case No. 250 in this Court. John Foster Claimant
may be considered and read in evidence on the
trial of this cause before the decision; and that a
certified copy of the said transcript may be
filed in this cause so soon as the same can be
or is made by the Clerk of this Court.

It is also further, hereby, stipulated, that the trans-
cript or any part thereof in Case No. 357. in this
Court Wm. E. P. Hartwell Claimant's. May
be considered and read in evidence on the
trial or before the decision of this cause, and that
a certified copy of the same may be filed in
this cause so soon as the same can be or is made
by the Clerk of this Court.

J. P. M.

By Atty.

E. Crosby of Counsel
for Claimant & appellant

No. 124.

United States District Court
for the Southern Dist of California

The United States
appellus
ad

Agustin Olvera
appellatus

Stipulation

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Filed July 22^d 1857

James
C. R.

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E. Crosby
Attorney for Plaintiff

In the District Court of the United States
for the Southern District of California.
December Term 1857

Agustín Quira

appellant

v

No. 124

The United States

appellee

"Cuyamaca"

Transcript No. 375

This Cause coming on to be heard
on appeal from the decision of the United
States Board of Land Commissioners to
ascertain and settle the private land claims
in the State of California, under an act of
Congress approved 3^d March 1851 on a
Transcript of the proceedings and decision
of said Board and the papers and evidence
upon which said decision was founded
and the evidence adduced before this Court
and it appearing to the Court that said
Transcript and the notice of appeal have
been duly filed according to law, and
counsel for the respective parties having
been heard

It is Ordered, adjudged and
decree that the decision of said Board
of Land Commissioners, be and the same
is hereby reversed, and that the claim of
appellant is good and valid in law, and
the same is hereby confirmed to him as
follows. The Land of which Confirmation

is hereby made is situate in the County
of San Diego, State of California, called
"Cuyamaca" containing eight (8) square
leagues of land and no more within
the boundaries described in the grant
and Map of said land and the Certificate
of Don Antonio Esturdillo First Justice
of the Peace, dated April 1st 1846 Con-
tained in the Transcript and the Testi-
mony on file in this Case. Provided
that the land of which Confirmation is
hereby made is of the extent of eight
square leagues of land and no more with-
in the boundaries as laid down in said
Map and grant if such quantity be there-
in contained, but if there be a less quan-
tity, then Confirmation is hereby made to
such less quantity.

Thus done & Signed in
open Court this 17th day of March 1858

Isaac N. Ogden
W. S. Dist. Judge

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BVCC

SD

No. 124

Deam

Agustin Olvera

vs

The United States

Decree

124 SD 15

PAGE 76

Filed this 18 March

1858

C. Lewis clerk

J. M. Coleman,
clerk

Recorded on Page 268

UNITED STATES OF AMERICA, ss.

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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 Southern
District of California, before you,
in a cause between Augustin Obvera, Appellant, and
The United States Appellee, (for that place called
Rancho Cuyamaca, Land Commission No. 375, District
Court No 124.) wherein the decree of the said
District Court entered in said cause, was
in favor of the said Appellant, Augustin
Obvera, and against the said Appellee.
Whereupon the said Appellee prayed an
appeal, which was duly allowed, by the
said District Court to remove the said cause
to the Supreme Court of the United States.

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as by the inspection of the ~~transcript of the record~~ certificate of the clerk of the said
Court, under the seal _____ of the said District _____
Court, which was brought into the Supreme Court of the United States by virtue of _____

agreeably to the Act of Congress, and the rules of the said Supreme
Court _____ 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 eighty-eight, the said cause came on to be heard before the said Supreme Court, ~~and~~ ~~the said transcript of the record, and was argued by counsel.~~ On consideration whereof, and it appearing that the appellant has failed to have its cause filed and docketed in conformity to the rules of this Court, it is now here ordered, adjudged and decreed by this Court, that this appeal from the District Court of the United States for the Southern District of California be, and the same is hereby docketed & dismissed.

And it is further ordered that this cause be, and the same is hereby remanded to the District Court of the United States for the District of California —
21st January 1869

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

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

Witness the Honorable *Salmon P. Chase*, Chief Justice of said Supreme
Court, the *first* Monday of *December*, in the year of our Lord one
thousand eight hundred and *Sixty-eight*. _____

COSTS OF— _____

Clerk . . . \$ _____

Attorney . . \$ _____

\$ _____

Taxed by _____

W. Middleton

Clerk of the Supreme Court of the United States.

No. *435*. *Dummbold* Term, 1868.

124 S. D.

MANDATE

SUPREME COURT UNITED STATES

W. J. v. Oberon

*Filed in U.S. District Court
for District of California this
13th day of August 1868
in presence of W. Hartman
Cly'*

W. Eastman Clerk

W. J. v. Oberon

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The United States } S. C. N^o 375
vs } Cuyamaca
Agustin Olvera } D. C. N^o 124

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On reading the mandate in this cause from the Supreme Court of the United States, and it appearing that the appeal heretofore taken in the above case from the District Court of the United States for the Southern District of California has been dismissed by the order of said Supreme Court; now on motion of J. Hartman Attorney for Claimant it is ordered that said mandate be filed and that the parties may proceed on the decree of said District Court heretofore rendered as upon a final decree in the cause.

John Hoffman
Dist Judge

N^o 124 S. D.

Agustin Olvera
Ats
The United States.

Final Order.

Filed August 19th. AD 1869
George B Whitney Clerk
By Wm H. Linnwood D.C.

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No: 124. ^{page 83} _{Reg.}

U.S. District Court
Southern District

Agustin Olvera

vs

The United States

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1. Notice of appeal
2. Order to take further testimony
3. Deposition of Jose J. Ortega
4. Order that transcript be returned to Office Secretary of Commissioners
5. Stipulation that no right of either party to be affected by return of transcript to Comm^{rs}
6. Petition to reverse decision of said Commission.
7. Summons
8. Answer of U.S. Attorney
9. Motion for rehearing
10. Affidavit for New Trial
11. Motion & Affidavit for Continuance
12. Deposition of J. J. Warner
13. Deposition of Jose Antonio Camillo
14. Stipulation that transcript in 250 be read in evidence
15. Decree
16. Mandate from Supreme Court

17. Final Order

18. Paper without signature
appearing to be a draft
of an opinion

Q2 AST
83
bACE

Aguirre Olvera appellants }
vs }
The United States, appellees }

The claim in this case is founded on a grant from Pio Pico, to the present claimant having date 11th of August 1846.

The genuineness of the grant is fully proven and it is also shown that the grant received the approval of the Departmental assembly —

The documentary evidence offered in this case consists of the original grant; the testimonial of the approval of the departmental assembly, the original petition of the claimant to the Governor, the original decree thereon — the report of the Alcalde of San Diego, the report of Joaquin Ortega, and a certificate of Estudillo Justice of the Peace of San Diego, as to the juridical possession — and a map, purporting to be a map of the place called San Jacinto —

The grant in this case is simply for the place called Cuzamaca, without any description or designation of boundaries, by which the particular tract intended to be granted can be identified, or its extent ascertained —

The grant does not refer to any map, or other extrinsic testimony by which the ~~the identity~~ the land can be identified, but the 3^d condition provides that the officer who shall give the possession shall have a map of the land granted made; after he shall have measured it and given the possession —

The petition to the Governor, gives no other description of the land asked, other than "the place Cuyamaca." —

No judicial possession of the land under the grant was ever given —

The only question which arises in the case is whether the description in the grant is sufficient to give it validity, and such a title in the grantee.

124 SD
PAGE 85
In the Case of Blake vs Dolbey 4th Con. Rep. quoted in the last case decided by this Court the Supreme say, "It is undoubtedly essential to the validity of a grant, that there should be a thing granted, which must be so described as to be capable of being distinguished from other things of the same kind — "But it is not necessary that the grant itself should contain such a description, as without the aid of extrinsic testimony, to ascertain precisely what is conveyed."

The Commission rejected the claim & in their opinion they say, "that the only description of the land in the grant is by the name of Cuyamaca, — that it is true that the grant of a place by name may be a valid grant, but to render it so, it should be accompanied by reference to some extrinsic evidence going to show the existence of a locality, known by that name, and identifying by certain and well defined boundaries —

In this case there is no such evidence"

The map which is filed in evidence, represents a ^{tract of land} place called Cuyamaca. bounded on all sides by high mountains containing according to the scale marked upon it some where about 14 or 15 square leagues. by whom this map was made is not shown, it certainly

with the map offered to be made by the alcalde when he had measured the land and given the possession, for we have his certificate in evidence that he never did give the possession; but his certificate he says that he has seen the land and that he knows from having seen and from the best information that it is conformable to and in accordance with a design drawn, and that it is of the extent of eight square leagues; he could certainly not have referred to the map in evidence, as he must have seen at a glance that the map contained almost ~~double~~ if not quite double the quantity, he certifies that was contained in it - ~~the map is enclosed xxxxxx for xxx~~
~~Sketch, here is a sketch to show the extent~~
~~that with the grant that it was found~~
~~in the expediente of the proceeding in the land~~
~~the certificate on the back of it that it is a copy~~
~~of a map in the expediente in the case in the~~
~~Secretary of State office - made perhaps by the~~
~~The parcel testimony in the case is quite as~~
~~indefinite as the documentary evidence -~~
~~One witness swears that he knows the boundaries~~
~~of the Rancho called Cuyamaca.~~
~~From the documentary evidence it is com-~~
~~possible to identify the land; and the parcel~~
~~testimony taken before the Commissioners was~~
~~certainly not more definite. But the~~
~~evidence of Ortega taken before us is con-~~
~~is I think sufficient for our purpose.~~
~~He swears that he has known the place~~
~~called Cuyamaca ever since 1829. Having~~
~~six years ago, that he has heard of a~~
~~Rancho occupied by the Indians of~~

~~before the court, should be.~~

From this evidence it is impossible to identify the land; the parol testimony offered in the case is not much more definite it certainly is insufficient to give such an identity to the land as to enable it to be distinguished from other ^{tracts} ~~tracts~~ of the same kind - but if the evidence offered is inadmissible to prove ^{the} boundaries, unless a better foundation had been laid for the various encroachments to the boundaries of the Rancho Cuyamaca. But there is no evidence that there was such a locality or that it had certain definite and well defined limits, and until this was proven, the evidence ~~of it~~ was no ground for the admission of parol testimony to prove the boundaries. ~~The testimony of Ortega that~~
~~he was to boundaries, I can see~~

Under this state of facts, much as I regret it, I feel compelled to reject the claims of the appellant, and a decree will be entered accordingly confirming the decree of the Commission and rejecting the claim.