

CASE No.

39

SOUTHERN DISTRICT

GUADALUPE GRANT

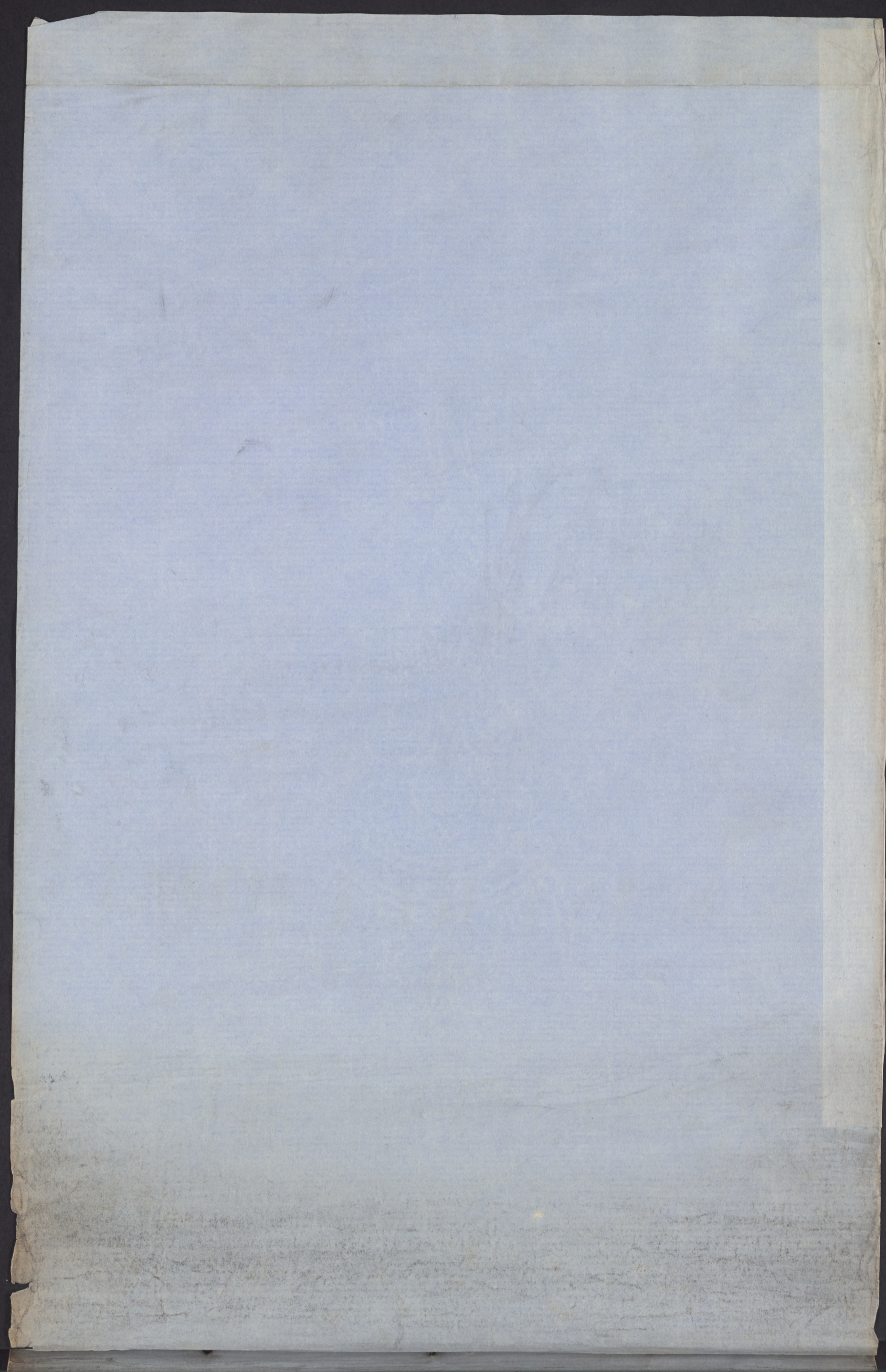
DIEGO OLIVERA, ET AL

CLAIMANT

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39 SD
PAGE 1

TRANSCRIPT

OF THE

PROCEEDINGS

IN CASE

NO. 66

Diego Olvera, et al,

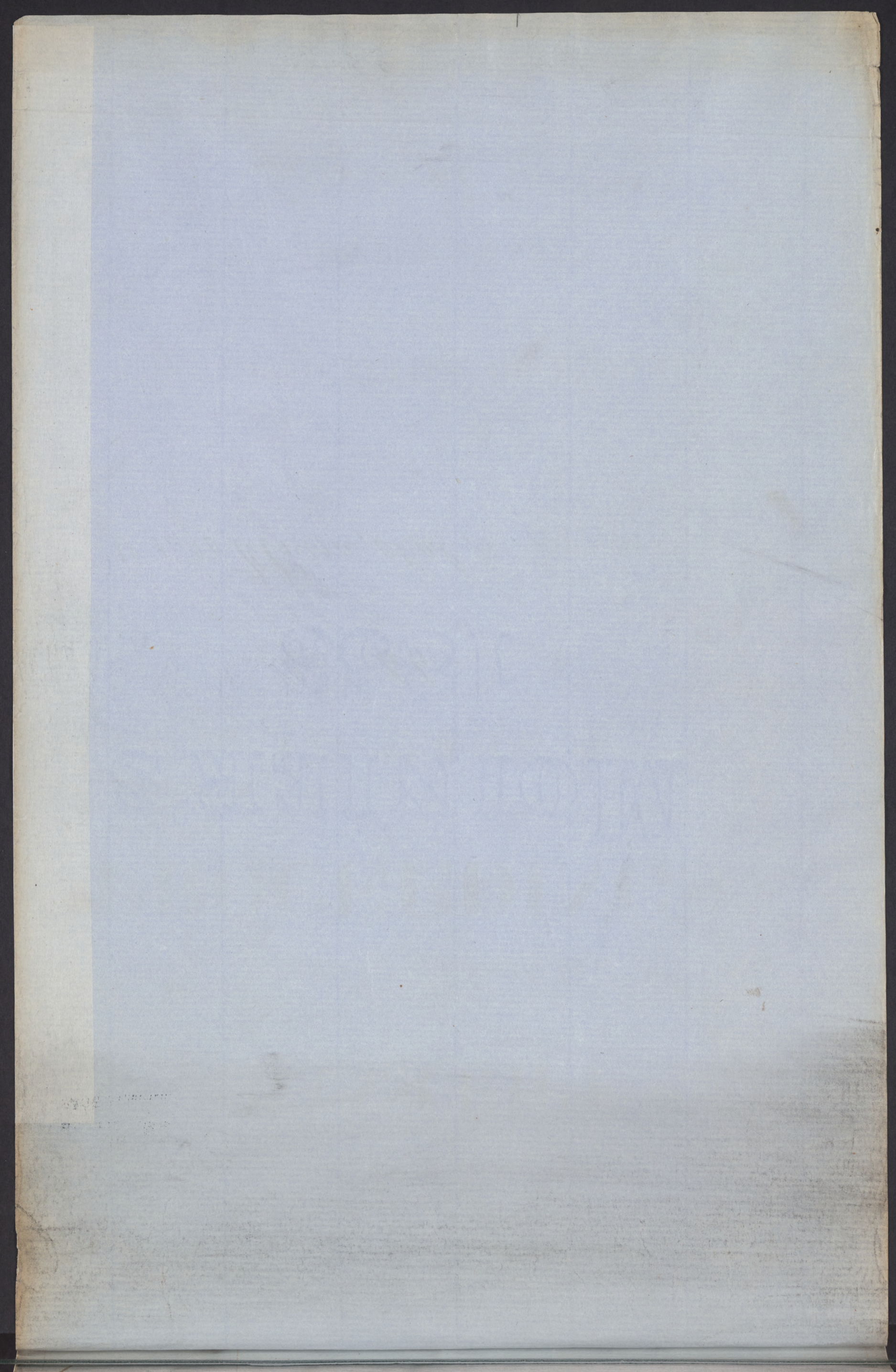
CLAIMANT

VS.

THE UNITED STATES, DEFENDANT,

FOR THE PLACE NAMED

"Guadalupe".



Office of the Board of Commissioners,

To ascertain and settle the Private Land Claims

IN THE STATE OF CALIFORNIA.

39 SD
PAGE 2

Be it Remembered, that on this *twenty fourth 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 *Diego Olvera et al;*
~~~~~ for the Place named  
*"Guadalupe"*  
~~~~~ was presented, and ordered to be filed and docketed with No. *66* 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 September 11th 1852,
In case no. *66* *Diego Olvera and Federico Aullanes* for the place named "Guadalupe" the deposition of *Pablo de la Guerra*, a witness in behalf of the claimants taken before Commissioner *Henry J. Thornton*, was filed;

(Vide page *4* of this Transcript)

San Francisco Jan. 6th 1853,
In the same case the deposition of *Andres Pico* a witness in behalf of the claimants taken before Commissioner *Henry J. Thornton*, was filed;
(Vide page *5* of this Transcript)

San Francisco Aug. 14th 1853.
 Case no. 66 (Diego Alvarez et al.) called; Sub-
 mitted on briefs on both sides and taken
 under advisement.

~~~~~

San Francisco December 6<sup>th</sup> 1853.  
 In the same case Commissioner Thompson  
 Campbell delivered the opinion of the Board  
 confirming the claim.  
 (See page 29 of this Transcript)

~~~~~

39 SD
 PAGE 3

1853
 66

Original

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

The Petitioners, Diego Olivera and Leonardo Arrellanes, respectfully shew:

Petition

39 SD
PAGE 4

That on the 8th day of March A.D. 1837, the petitioners applied to the Governor of California for a grant of the tract of land known by the name of Guadalupe in the then jurisdiction of Santa Barbara and now County of San Luis Obispo; that their petition was referred by the Governor on the 9th day of March A.D. 1837 to the Ayuntamiento of Santa Barbara for their report thereon, which body reported in favor of the said petition on the 14th day of March 1837; and on the 8th day of April A.D. 1837, Juan B. Alvarado, Governor of California, made a Decree granting to the petitioners the aforesaid tract of land, and directing its referance to the Deputation of California for their Opinion thereon; that on the return of the aforesaid documents to the said Governor Alvarado for his action thereon, the said Juan B. Alvarado, Governor of California, by virtue of Authority in him vested, did, on the 21st day of March A.D. 1840, grant, by formal title, to the Petitioners the said tract of land: called Guadalupe with the limits set forth in the Map accompanying the petition.

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That on the 23rd day of May 1840 the said tract of land was duly surveyed and the juridical possession of it given by the proper Authority to the petitioners: copies of which expediente is hereto annexed marked A, with a translation marked B; and copies of the formal grant and Map marked C; with a Translation marked D; and a copy of the act of survey and juridical

4

possession marked E with a Translation marked F.

That even since the 8th day of April A.D. 1843, the petitioners have been and now are in the quiet peaceful and undisputed possession of the said tract of land;

That the said tract of land has not been surveyed by the U.S. Surveyor General; but that it was surveyed by the proper authority at the time of giving the judicial possession of it, and the boundaries marked out, and that they are now well known.

The petitioners relies for confirmation of title upon the original papers, copies of which are hereto annexed, upon the minutes and documents in the archives now in the possession of the Surveyor General, and upon such other and further proofs as they may be advised are necessary.

Wherefore they pray the Commissioners to confirm to them the aforesaid tract of land.

By their Attorneys
Hallett, Peachy & Bellings

Filed in Office July 24th 1852
Geo. Fisher Secy

Deposition
of Pablo de la
Cuerpo

Office of the California Land
Commissioners.

And this day before Henry S. Thornton one of the Commissioners, for ascertaining & settling private Land claims in California came Pablo de la Cuerpo a witness produced in behalf of the claimant Lieja, Olivera et al whose

39 SD
PAGE 5

250

petition is No 66 on the Docket of the Board
& was duly sworn, his evidence being given
in English.

The Land Agent of the U.S. was present

Questions propounded by Counsel for claim-
ants, & witness answers.

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

Answer. My name is Pablo de la Guerra,
my age is about 32 years. I reside in Santa
Barbara and have lived in California all
my life.

2nd Quest. - Examine the papers before you
marked No 3 and filed with this deposition
and say if the signatures are genuine and the
documents genuine and original?

Answer. I am acquainted with the signatures
of Juan B. Alvarado, Manuel Jimenez, Antonio
Olivera, Antonio Rodriguez, & Jose Maria
Valencia: their signatures to these documents
are genuine, and to the best of my knowledge &
belief the documents themselves are genuine &
originals.

Pablo de la Guerra

U.S. Land Agent
sworn to & subscribed before
me this 10th Sept 1852.

Wm. S. Thomson
Comm^r &c

Filed in Office Sept 11th 1852

Geo. Fisher Secy

39 SD

PAGE 6

200

Deposition of
Andres Pico

San Francisco Jan^y 6th 1853.
On this day before Com^r Henry J. Thornton
came Andres Pico, a witness produced in
behalf of the Claimants, Diego Olivera and
Leodoro Arellanes, petition No 66, and was
duly sworn, his evidence being interpreted
by the secretary.
The U.S. Associate Land Agent was
present.

39 SD
PAGE 7

My name is Andres Pico, my age is forty
two years, I was born in California, and
live in Los Angeles.

I know the Rancho of Guadalupe: it is between
Santa Barbara and San Luis Obispo: Leodoro
Arellanes & Diego Olivera have occupied
this Rancho with cattle, horses, corrals,
sowings & a house since 1840, and I believe
before that time.

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Andres Pico

U.S. Land Agent present
Sworn to and subscribed
before me this 6th of Jan^y 1853,
Henry J. Thornton Com^r &c.

Filed in Office Jan^y 6th 1853.
Chas. Fisher Secy

Open Doc
follows "Español"

7

"A"

1. L. D. N. O.

Expediente.

Promovido por los Ciudadanos Diego Olivera
y Teodoro Arrellanes en soli-
citud del parage
nombrado

39 SD
PAGE 8

Guadalupe.

1837

138

1871
1872

8

2. S. D. N. O.

Como Sr. Gobernador.

S. B. Barbara Mzo 9
de 1837.

Informe
el Ayuntamiento de
esta Municipalidad,
si los interesados en
esta instancia obtien
en todos los requisitos
necesarios para ser
atendidos en su soli-
citud: Si el terreno
que pretenden esta
balda si no perte-
neci a la propiedad
particular de algun
individuo Pueblo o
Mision o si perte-
neciendo a alguno
de estas ultimas se
halla en estado de
adjudicarse en
colonizacion conforme
a las leyes. En ac-
uadas estos informes
volvora el Expediente
al Gob. p. su res-
olucion.

Los Sr. Diego Olivera
y Teodoro Arellanes, ambos veci-
nos de esta poblacion ante V. E.
respectuosam. como mas haya lu-
gar en derecho, decimos: Que neci-
sitando de un terreno p. cultivar,
y criar en el ganados de todas
clases, que produzcan la subsisten-
cia de nuestras familias, y hallandose
un parage en las inmediaciones de
la ex-mision de la Purisima, cuyo
establecimiento no lo necesita, pues
se halla actualmente valdico, conocido
con el nombre de Guadalupe, supli-
camos a V. E. se sirva adjudicarnoslo
en propiedad conforme a las leyes
de colonizacion, de cuyo terreno acom-
panamos debidamente el disenio res-
pectivo.

P. T. A V. E. Suplicamos se
sirva admitirnos en esta sumisa
representacion, dispensando que vaya
en papel comun por no haber en esta
Municipalidad del sellado corres-
pondiente.

Santa Bar. Mzo 8 de 1837
Diego Olivera.

A ruego del interesado,
Jose A. de la Hoya y
Carrillo.

Alvarado

39 SD
PAGE 9

3. S. D. N. O.

Nuestro Ayuntamiento.

La Comision á quien V.S. se ha servido confiar para que dictamine sobre el Expediente que forma la solicitud de Ciudad. Diego Olivera en pretension del paraje nombrado Guadalupe en observancia del decreto del Gobierno fha suero del presente espono: que los interesados obtienen todos los requisitos legales para ser atendidos en su solicitud, que el terreno que solicitan es baldio y en estado de adjudicarse en Colonizacion conforme á la ley de 18 de Agosto de 1824. y el reglamento de Nobro. de 1828, pues aunque se ha conocido por de la pertinencia de la Exonision de la Purisima y se haya á la vez valdís siss ocupacion necesaria, y por consiguiente en estado de adjudicarse conforme á las Leyes citadas.

Los que representan son ciudadanos mejicanos ameritados tienen buena conducta y bienes con que poblarlo por lo que se hacen acreedores por la ley y por las consideraciones del Gobierno á quien representare. Por tanto ofrese la Comision á la deliberacion de V.S. la siguiente proposicion.

Puede el Gobierno adjudicar en propiedad á los Ciudad.ºs Diego Olivera y Teodoro Arceyanos el paraje nombrado Guadalupe.

St.º Bart.º Marzo 14 de 1837.

Valentin Cortá.

Pablo Vanega

Solo

Buenos Días

39 SD
PAGE 10

4 S.D.R.

1706
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11

En sesion de hoy aprobó el G. A. la proposicion anterior, acordando se bulba este Expediente al Gobierno para su resolucion.

fha ut Supra. Diego Olivera

Srio
Benito Diaz.

39 SD
PAGE 11

S. L. P. O.

Santa Bart.^a Abril 8 de 1837

Vista la peticion con que da principio este Expediente, el Ayuntamiento del G. Ayuntamiento de esta Municipalidad con todo lo demas que se tubo presente y ver conuino; de conformidad con lo dispuesto p.^a las leyes y Reglam.^{to} de la materia se declaran á los Ciudadanos Diego Olivera y Teodora Arizanes dueños en propiedad del terreno conocido con el nombre de Guadalupe, demarcado en el disenio que acompaño á su solicitud y bajo los **linderos** q. en él se expresan, sugiendose á las condiciones establecidas en la Ley de dieziocho de Agosto de ochocientos veinticuatro y al Reglam.^{to} de Veintinueve de noviembre de mil ochocientos veintiocho libras el despacho correspond.^{te} tomese razon en el libro respectivo y remítase este Expediente á la Excm.^a Diputacion p.^a su debida aprobacion, en cuyo caso los interesados, á quienes se hará saber este decreto, presentaran nuevamente su titulo p.^a q. se les revalide. Asi el Sr. D.^o Juan B. Alvarado Gov.^{ador} interino del Estado y Presid.^{te} de la Excm.^a Diputacion del mismo lo decretó, mandó y firmó, de que doy fé = Juan B. Alvarado.
= Lic.^{do} Cosme Peña = Srio del Despacho.

S. L. P. O.

1870

There follows the map

8. S. D. N.

Sello Tricero Dos Reales.

Habilitado por la Administracion de la Aduana Maritima del Puerto de Monterey de la Alta California, para los años de mil ochocientos treinta y seis y mil ochocientos treinta y siete

68-1

39 SD
PAGE 12

Gutierrez.

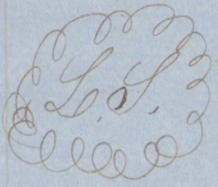
Angel Ramirez.

Calza para los años de 1839 y 1840

Alvarado.

Antonio M. Orio.

Exmo. Sr.



Diego Olivera y Ferras Arreanas vecinos del partido de Santa Barbara ante V.E. respetuosamente hacemos presente: Que habiendo V.E. tenido habien concedernos el parago nombrado Guadalupe, previos los informes y demas formalidades prevenidos en la ley de Colonizacion nos hallamos hasta la fha. ocupando dho sitio, en donde tenemos fucado nuestra subsistencia, y nos dedicamos al cultivo y crias de ganado, como ha sido nuestra profesion, mas como a la conecision que V.E. se sirvais hacernos, estubo opuesta la Exma. Diputacion y el asunto deve dirigirse al Supremo Gov.º suplicamos se sirva mandar se reforme el titulo que devidamente acompaño, y que interinamente se nos di posesion juridica para evitar cuestiones con los colindantes y poder con mas libertad dedicarnos a su fomento. Exmo Sr. los representantes somos de una avanzada edad y la mayor parte de nuestros años los hemos empleado en el servicio de las armas, y por esto no dudamos de su justificacion que acudite a nuestra peticion, gracia que esperamos de su acreditada bondad, asi a los Ciudadanos del Departam.º que felicim.º Gobierno

Monterrey Marzo 17

9. S. D. N.

de 1848.

Diego Olivera,

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

39 SD
PAGE 13

I, Samuel D. King, Surveyor General of the United States for the State of California, and as such now having in my Office and under my charge and custody a portion of the Archives of the former Spanish and Mexican Territory or Department of Upper California, do hereby certify that the nine preceding and hereunto annexed pages of tracing paper numbered from one to nine inclusive, and (S.D. 16) each of which is verified by my initials, exhibit true and accurate copies of certain documents now on file and forming part of the said Archives in my Office.

S. D. King

In testimony whereof I have hereunto signed my name, Officially, and affixed my private seal (not having a seal of Office) at the City of San Francisco, Cal. this sixteenth day of February A.D. 1852.

Sam. D. King
Sur. Gen. Cal.

Filed in Office Feb'y 24th 1852

(Signed) Geo. Fisher,
Secy.

6700

1852

S. His Excellency the Governor

"B"

Santa Barbara,
March 9th 1837.

The Illustrations
Ayuntamiento of
that Municipality
will report: if the
parties interested in
this proceeding
have all the requi-
sites necessary to
entitle their petition
to be attended to;
if the land they
ask for is vacant;
if it belongs to
the private property
of any individual
pueblo or Mission;
and if pertaining
to any of the latter
it is in a state
to be adjudicated
in colonisation
conformably to the
laws.

These reports being
made the espediente
will be returned
to the Government
for its decision
(Signed) Alvarado

The Citizens Diego Olivera and
Teodoro Arvelles, both residents
of this town, before your Excel-
lency, in the manner pointed
out by Law, respectfully appear,
and say: That having ne-
cessity for a peice of land to
cultivate and in which to breed
Cattle of all kinds which may
conduce to the subsistence of
our families and there being a
place in the vicinity of the Ex-
mission of La Purisima which
that Establishment does not
require since it is now vacant,
known by the name of Guadalupe,
we pray Your Excellency to be
so good as to adjudicate it to
us in fee, conformably to the
laws of Colonisation: of which
we accompany in due form
the respective map.

Wherefore we pray Your Excellency
to be so good as to receive this
our representation, excusing its
going on common paper, as
there is none in the munici-
pality of the corresponding
stamp.

Santa Barbara March
8th 1837:

(Signed) Diego Olivera
With the request of the party in-
terested.

(Signed) José A de la
Asuena y Canillo

39 SD
PAGE 14

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To the Illustrous Ayuntamiento.

The Committee to whom your Honourable Body has seen fit to refer for report, the petition of Citizen Diego Olivera for the place called Guadalupe, in compliance with the Decree of the Government of the 9th instant, report: That the petitioners have the legal requisites to be attended to in their petition; that the land asked for is vacant and in a state to be adjudicated in Colonisation conformably to the Law of August 18th 1824. and the regulation of November 1828. because, although it has been known as pertaining to the ex-mission of San Purisima, and in 1828 became vacant and without the necessary occupation, it is consequently in a state to be adjudicated conformably to the aforementioned laws.

The petitioners are Mexican citizens of merit of good conduct, have property with which to occupy the land, and therefore deserving from the Law and from the consideration of the Government to which representation is made.

Wherefore the committee offer to your Honourable Body the following resolution:

The Government may grant in full to citizens Diego Oliveira and Pedro Arribas the place called Guadalupe.

Santa Barbara March 14th 1837

(Signed) Valentin Cota,

(Signed) Pablo Vaneas

(Signed) Berinto Dias
Secretary

In session of this day the Illustrous Ayuntamiento approved the foregoing proposition, directing the Expediente to be returned to the Government for its decision.

Done as above

(Signed) Berinto Dias (Signed) Diego Olivera
Secretary,

15

Santa Barbara April 8th 1837,

Having seen the Petition at the beginning of this Expediente, the report of the Illustrations Ayuntamiento of this Municipality, and all others presented and examined;

In conformity with what is laid down in the Laws and Regulations concerning this matter, citizens Diego Olivera and Federico Arellanes are declared owners in fee of the Land known by the name of Guadalupe marked out in the map which accompanies their petition and within the boundaries the boundaries therein expressed, subject to the conditions established in the Law of August 18, 1824 and the Regulation of November 21st 1828; let the corresponding letter patent issue, take note in the respective books, and remit this expediente to the Most Excellent Deputation for its due approbation, in which case the parties interested, who will be notified of this decree, will present their title again to be revalidated.

Thus I, Don Juan B. Alvarado Governor ad interim of the State and President of the Most Excellent Deputation of the same, decreed, ordered and signed, of which I certify

(signed) Juan B. Alvarado
 (signed) Licentiate Casme Pena
 Secretary

39 SD
 PAGE 16

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FILED
 APR 10 1837

Stamp Third . Two Reales

Provisionally authorized by the Administration
of the Custom House of the Port of Monterey in
Upper California, for the years 1836 and 1837
(Signed) Gutierrez (Signed) Angel Ramirez.
Good for the years 1839 and 1840
(Signed) Alvarado (Signed) Antonio M^a Cis.

39 SD
PAGE 17

Maritime Custom
House of Monterey

Most Excellent Sir,

Diego Olivera and
Seadono Arallanes, residents of the District of
Santa Barbara before your Excellency respectfully
represent;

That your Excellency having had the goodness
to grant us the place called Guadalupe, the
reports and other formalities provided for in
the Law of Colonisation having been previously
taken, we have to the present date occupied
the said place, where we hold established
our means, and dedicated ourselves to agri-
culture and the breeding of Cattle as it has
been our profession & but as the grant
which your Excellency was pleased to make
us was opposed to by the Most Excellent
Deputation and the Subject was to be directed
to the Superior Government, we beg your
Excellency to be pleased to order the Title
which we submit in due form to
be made over again, and that in the mean
time judicial possession be given to us in
order to avoid questions with the neighbours
and to enable us to dedicate ourselves with
more liberty to its improvement.

Most Excellent Sir; The petitioners are at
an advanced age and the greater part of our
years have been employed in the military
service, and for this reason we submit

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our claim to your justification: a favor which we hope from your known goodness to the Citizens of the Department which is so happily Governed:

Monterey March 12, 1840.

(Signed) Diego Olivera

Exd. l
R. P.

100

39 SD
PAGE 18

Filed in Office Feb'y 24' 1852.

Gen. Fishers
Seiz

Open 20c follows

1840
1852

1913
1914

Sello 1^o Seis Pesos.

Document
N^o 3,
Annexed to the
Deposition of
Pablo de la Guerra.

Rehabilitado provisionalmente por la Aduana Marítima de
Monterrey para los años de 1839 y 1840.

Alvarado.

Antonio M^o. Osio.

Juan B. Alvarado Gobernador Constitucional del
Departamento de las Californias.

39 SD
PAGE 19

Por cuanto los Ciudadanos Diego Olivera y Teodoro
Areganes han pretendido para su beneficio personal y el de
sus familias el terreno conocido con el nombre de Guadalupe,
colindante con la Laguna inmediata á las Lomas de Azufre y
con el Cerro de Lospe; practicadas previamente las diligencias y
averiguaciones convenientes, segun lo dispuesto por leyes y regla-
mentos de la materia, usando de las facultades que me son conce-
didas, á nombre de la Nacion Mexicana, he venido en concederles el
terreno mencionado declarandoles la propiedad de él por las presen-
tes letras, entendiéndose dicha concesion con entera conformidad á
las leyes, á reserva de la aprobacion ó desaprobacion de la Exma.

Junta Departamental y bajo las condiciones siguientes.

- 1^a Los agraciados ni sus herederos podrán dividir ni enagenar
el que se les adjudique: imponerle como vinculo fianza hipoteca
ni otro gravamen aunque sea por causa piedadosa ni pasarlo á ma-
nos muertas.
- 2^a Podrán cercarlo sin perjudicar las traversias caminos y
servidumbres; lo disfrutaran libre y exclusivamente destinandolo al
cultivo y uso que mejor les acomode.
- 3^a El Juez respectivo les dará posesion legitima ó juridica en virtud
de este despacho por el cual se demarcaran los linderos y pondran
sus mojones.
- 4^a El terreno de que se les hace donacion es puramente el que se es-
presa en la solicitud de los interesados y se demarcaran en el diseño
que corre agregado al expediente; y el Juez que les posesione pasara aviso
á este Gobierno del numero de sitios que comprende.

En consecuencia mando que sirviendoles de título el presente y
teniendose por firme y validero se tome razon en el libro que corresponde,
y se entregue á los interesados para su resguardo y demás fines.

Dado en Montevideo á veinte y cinco de Marzo de mil ochocientos
cincuenta.

Juan B. Alvarado

Mant. Jimeno
Srio.

Queda tomada razon de este Despacho en el libro de acientos sobre ad-
judicacion de terrenos baldios á fl. 2.

Jimeno.

39 SD
PAGE 20

76

1857
20

None follows the map

21 - 80

Sello Fercero Dos Reales.

Habilitado por la Administracion de la Aduana Mexicana del Puerto de Monterrey de la Alta California, para los años de mil ochocientos treinta y seis y mil ochocientos treinta y siete.

68-2

Gutierrez.

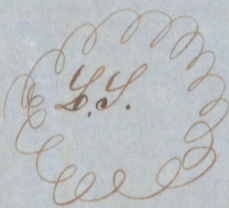
Angel Ramirez.

Valga para los años de 1839 y 1840

Alvarado.

Antonio M. de O.

39 SD
PAGE 21



Por Juz de Paz del Partido de Santa Barbara.

Diego Olivera y Teodoro Arillanes de esta ciudad ante V. por el curso que en derecho haya lugar decimos: que por la consicion que el go^{no}

Vista la solicitud de los que de este Departamento nos hizo del terreno conocido con el nombre de Guadalupe, como lo acredita el expediente q. p. el dia 27 del presente que se oyo expedido, tenemos por esta razon el mismo Mayo se parara a derecho de pedir a V. la posesion juridica en virtud de expresarlo asi la condicion tercera de dicho titulo.

El Ciudadano Ant. Olivera juez de Paz de esta Municipalidad asi lo de- mos.

Orde mandé y firmé

Sta. Barb. y Abril 8 de 1840.

Ant. Olivera.

Por si y a nombre del ayuntamiento

Diego Olivera.

En el Puerto de Santa Barbara a los cinco y tres dias del mes de mayo del año de mil ochocientos quarenta arremto a la solicitud hecha por los Ciudadanos Diego Olivera y Teodoro Arillanes a fin de que se les dé la correspondiente posesion del sitio conocido con el nombre de Guadalupe concedido por el Gobierno de este Departamento, y habiendo la falta de un Agrimen sor q. para efecto de las medidas correspondientes compararse p. q. se mido el enunciado terreno lo hizo yo el el primer nombrado juez de Paz

Ciudadano Antonio Olivera con total arreglo á las primeras medidas q. se han practicado cuyo diseño se agregará al Expediente poseso por mí y los testigos de asistencia al espresado sitio, y prosese á dar la posesion indicada, arreglandose al título q. se le ha conferido por el Superior Gobierno de este Departamento con fecha veinte y uno de marzo de mil ochocientos quaranta.

Yo el espresado juez de este punto así lo decreté mandé y firmé con los testigos de mi asistencia doy fe,

Ant. Olivera

Asistencia

Antonio Rodriguez.

Asistencia

José M. Valenzuela.

39 SD
PAGE 22

En el Rancho nombrado Guadalupe á los veinte y siete dias del mes de mayo de mil ochocientos quaranta; El juez que suscribe heviendo hecho citacion de colindantes, comparecieron estos, siendo los Ciudadanos José M. Valenzuela por Establecimiento de la Purissima y Fran.º Dujada como encargado del Rancho de Nipomo: les hizo saber el objeto con q. me havia condesido á haquel parage, y q. en este caso presentasen los documentos q. respectivamente tubieren sobre propiedad de aquel terreno pues habia á remedirlo y poner en posesion de él á los Ciudadanos Diego Olivera y Tesoro Arullans y no haviedo presentado documentos ningunos q. impidiesen las medidas les dije q. habia á proceder ha ellas: lo q. pongo por diligencia q. autoris y firmo con los testigos de mi asistencia según derecho.

Ant. Olivera.

Asistencia

Antonio Rodriguez.

Asistencia.

José M. Valenzuela.

En el referido lugar á los veinte y ocho dias del mismo mes y año yo el propio juez para la practica de estas diligencias nombre dos oficiales medidores y dos corduleros á quienes les hizo saber su nombre:

miento el q. aceptaron bajo de juramento q. otorgaron ofreciendo desem-
peñar fielmente su encargo: lo q. autorizo y firmo con los Testigos de
mi asistencia segun derecho.

Anto. Olivera.

Asistencia.

Antonio Rodriguez.

Asistencia.

José M. Valenzuela.

En el mismo dia mes y año estando en el paraje nombrado la
Boca del Arroyo de los flacos á efecto de verificar las medidas y posesion
q. corresponde á los Ciudadanos Diego Olivera y Teodoro Arrellanes del
sitio nombrado Guadalupe por los requisitos de ley y estando
ante mí los testigos de asistencia, los oficiales medidores, los cordeles y
q. el Juez Ciudadano Antonio Olivera hizo medir un cordel q. conte-
nia cincuenta varas el cual fue examinado y reconocido y asiendo á
sus extremos unos Bancos de madera y por mi disposicion se
tiró el cordel rumbo al este comenzando desde los meanos q. hay
en dicho lugar en donde se clavo un palo en señal de mohonera
y habiendose medido dos y media leguas remató en el camino
q. sale para la Cruz de Nipomo en donde se clavo un palo en
señal de mohonera, en seguida y por mi disposicion se tiro el
cordel por sobre el llano de lo largo rumbo al Sur y habiendose
medido tres leguas remató en lo alto de las lomas del Azufre en
cuyo lugar está un encino el mas visible y sirvió de mohonera.
En seguida y por mi disposicion se tiro el cordel sobre las mis-
mas lomas rumbo al Noroeste, y habiendose medido legua y
cuarto remató en la orilla del mar en donde está un morote
q. sirvió de mohonera. Inmediatamente y por mi disposi-
cion se tiro el cordel por sobre una cañada rumbo al Norte y
habiendose medido dos y media leguas remató la medida en
donde se comenzó y se concluyeron las medidas de este
sitio ha satisfaccion de los interesados; Lo q. pongo por dili-
gencia q. autorizo y firmo con los testigos indicados.

Antonio Olivera.

Asistencia

Antonio Rodriguez

Asistencia

Jose M. Valenzuela

Filed in Office Sept. 11th 1852.

(Signed) Geo. Fisher

Scrij.

39 SD
PAGE 24

6405
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Stamp First, Six Dollars

"20"
Translation of
Letter

Provisionally Authorized by the Maritime Cust.
House of Monterey for the years 1839
and 1840.
(Sgd) Alvarado. (Sgd) Antonio M. Cisneros.

39 SD
PAGE 25

Maritime
Customs House
Monterey

Luan B. Alvarado, Constitutional
Governor of the Department of the
Californias.

300

Whereas Citizens Diego Olivera and Teodoro
Arellanes, have for their own personal
benefit and that of their families, petitioned
for the land known by the name of "Asuadalupé",
bounded by the Laguna which is near the
hills of Acapulco, and with the hill of Laspe,
the necessary measures and examinations having
previously been made as required by laws and
regulations relative to this matter, using
the powers which are conferred upon me, and
in the name of the Mexican Nation, I have
granted them the above mentioned land, declaring
to them the ownership of it by these presents,
said grant being understood to be in entire
conformity with the laws, subject to the approval
or disapproval of the Most Excellent Departmental
Junta, and under the following conditions, viz:

1. Neither the grantees nor their heirs can divide or alienate that which is granted them: subject it to any tax, entail, pledge, mortgage or any other incumbrance even for pious purposes, nor convey it in mortmain.
2. They may enclose it without prejudice to the roads, crossroads and servitudes, and enjoy it freely and exclusively, making such use and cultivation of it as they may see fit.

3. The proper Magistrate will give them legal or judicial possession in virtue of this order, to whom the boundaries shall be marked out and the bounds placed.

4. The land which is granted in donation is only that which is described in the petition of the persons interested, and marked out on the map which goes with the Expediente, and the Magistrate who may put them in possession will inform this Govern: ment of the number of sitios it embraces.

In consequence, I order that serving them for title these presents, and being held as firm and valid, note be taken of them in the corresponding book, and they be delivered to the interested persons for their security and other purposes.

Given at Monterey on the twenty first of March one thousand eight hundred and forty.

(Signed) Juan B. Alvarado

(Signed) Manuel Jimeno

Secretary

Note has been taken of this order in the book of entries of grants of vacant lands at page 2.

(Signed) Jimeno

Exd^o
R. P.

Filed in Office Feb'y 24th 1852

Geo. Fisher Secy

Manuel Jimeno

39 SD
PAGE 26

250

FILED

Stamp Third. Two Reels

Authorized by the Administration of the Maritime
Custom House of the Port of Monterey in Upper
California for the years one thousand eight
hundred and thirty six and one thousand
eight hundred and thirty seven,
(Signed) Centenes (Signed) Angel Pomires

"T"
Translation of
Survey & Pos.
session.

39 SD
PAGE 27

Good for the years 1839 and 1840
(Signed) Alvarado (Signed) Antonio M. Osio

Maritime
Custom House
Monterey

To the Justice of the Peace of the Partido
of Santa Barbara.

Santa Barbara
April 8th 1840.

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Having seen what
is represented in
the request the
council directed
that on the 25th
of May prox;
the possession
be given which
is requested.
Citizen Antonio
Olivera Justice
of the Peace of this
Municipality thus
decreed, ordered
and signed,

(Signed) Ambrosio Olivera

Diego Olivera and
Teodoro Arellanes of this vicinity
appear before you and represent;
that by the grant which the Govern-
ment of this Department made them
of the land known by the name of
Guadalupe, as shown by the
title which was given them,
they have a right to ask of you
the judicial possession in virtue
of its being so required by the
third condition of said title.
They therefore pray you to grant
their request, by which they
will receive justice &c.

They swear (in the required
form) Santa Barbara April
8th 1840. for himself and in
the name of the second.

(Signed) Diego Olivera

In the Port of Santa Barbara on the twenty
third day of May in the year one thousand eight
hundred and forty, in compliance with the
request of Citizens Diego Olivera and Teodoro

well as that the corresponding possession might be given them of the place known by the name of Guadalupe, granted by the Government of this Department, for want of a Surveyor who should be present to measure the aforesaid land, I, the First Justice of the Peace, did so, with entire conformity to the measurements previously made, the map of which is annexed to the Expediente. I, and the assisting witnesses will proceed to the aforesaid place and give the possession referred to, conforming to the title which has been given them by the Superior Government of this Department, dated the twenty fifth of March one thousand eight hundred and forty.

I the aforesaid Magistrate of this place thus decreed, ordered, and signed with my assisting witnesses: I certify.
Assisting witnesses (signed) Antonio Olivera
(signed) Antonio Rodriguez
(signed) Jose Ma Valensuela

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In the Rancho called Guadalupe on the twenty seventh day of the month of May, one thousand eight hundred and forty, I, the Magistrate who subscribes, having summoned the Colindantes co. terminous neighbours citizens Jose Maria Valensuela for the establishment of the Prisca and Francisca Quijada as in charge of the Rancho of Tepic, appeared, and I let them know the object with which I had come to that place, and that they should present the documents which they might have relative to the ownership of that land, for I was going to measure it and put in possession of it the citizens Diego Olivera and Teodoro Arrellanes, and nothing having been presented which could hinder the measurements, I said that I was going to commence

them; and I made official note of it, which I authenticate and sign with my assisting witnesses according to law.

Assisting Witnesses (signed) Antonio Olivera.
(signed) Antonio Rodrigues.
(signed) José M.^a Valenzuela

39 SD
PAGE 29

In the aforesaid place, on the twenty third day of the same month and year I, the proper magistrate for the performance of these official acts, appointed two measures, and two rope bearers, and I informed them of their appointments which they accepted, offering under oath to discharge faithfully the duties of their office, which I authenticate and sign with the assisting witnesses, according to law.

280

Assisting Witnesses (signed) Antonio Olivera,
(signed) Ambrosio Rodrigues
(signed) José M.^a Valenzuela

On the same day, month, and year, being in the place called the mouth of the Arroyo del also place for the purpose of verifying the remeasurements and possession which corresponds to Citizens Diego Olivera and Teodoro Arrellanes, of the place called Guadalupe, all the legal requisites having been previously complied with, and being present the assisting witnesses, the measures, the rope bearers, and the magistrate, Citizen Antonio Olivera, I caused to be measured a cord which contained fifty varas which was examined and recognized and staves fastened to its extremities; then by my direction the cord was drawn east from the meadows (meadows) sand banks which are at said place, where a stake was written as a bound, to the road which ascends to the mesa de Nipomo, distant two and a half leagues, and a stake was driven as a bound; then also by my order,

the cordel was drawn over the Solano de la Laguna, in a southerly direction to the high part of the Lomas de Arupe, where is an oak, the most easily distinguished which served as a bound distant three leagues; immediately afterwards the cordel was drawn over the same hills back westerly to the sea shore, where is a "Little bluff" morrito which served as a bound, distant one league and a quarter, immediately and by my order the cordel was drawn, northward, over a Canada to the place of beginning, distant two and a half leagues; and thus the measurements of this place were finished to the satisfaction of the parties interested. And I make official note of it, which I authenticate and sign with the aforesaid witnesses.

39 SD
PAGE 30

(Signed) Ambrosio Olivera
Assisting witnesses
(sgd) Antonio Rodriguez
(sgd) M^a Valenzuela

Ex de
R.P.

250

Dated in Office July 24th 1832.
Gen^l Fishers Secy

Diego Olivera }
vs } "Guadalupe" By metes and
The United States } bounds.

Opinion

The papers on file in this case show that the Claimant by their petition bearing date March 8th 1832, solicited of Governor Alvarado a grant of a certain tract of land known by the name of "Guadalupe" on the 8th day of

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April A.D. 1837 Governor Alvarado having received a favorable report from the Ayuntamiento, made his concession of the land called Guadalupe, with the boundaries as they were described on the map which accompanied the said petition. It also appears that on the 12th of March 1840, the said Claimants presented another petition to the Governor, in which they represent that, the place, called Guadalupe, which had been previously granted to them, they had continued to occupy up to that time, dedicating themselves to agriculture and the breeding of cattle; and they further state that the grant which they had obtained had been opposed by the Udeputacion, and that the same was to be directed to the superior Government, they therefore prayed that their title which they then submitted, be made "over again" and that in the mean time Judicial possession of the premises should be given to them. On the 21st day of March 1840 Governor Alvarado issued to the said parties, a title in form with the usual conditions that the parties, were not required to build a house within a year. The fourth condition attached to the grant is in the following words, to wit, "The land which is granted in donation is only that which is described in the petition of the persons interested and marked out on the map, which goes with the Expediente; and the magistrate who may put them in possession will inform the Government of the number of sitios it embraces." On the 23rd day of May A.D. 1840, the land was judicially measured, and the judicial possession duly given to the parties. All the foregoing

39 SD
PAGE 31

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papers and documents are satisfactorily proved to be genuine. This proved by the Deposition of Andres Pico that ^{the} Godoro Anallans and Diego Olivera had occupied the premises in question, with Cattle, Horses, Corrales, Sowing, and a house since the year 1840, and as he believed before that time.

This appears from the statement, contained in the petition of the claimants which bears date the 12th of March 1840, that the Deputation instead of approving the first concession made by the Governor, as the claimants have insisted in their trip, was the case, absolutely refused their approval and directed that the same should be forwarded to the Superior Government for approval. This cause was in conformity with the regulations of 1828, but I do not consider that the refusal of the Deputation to confirm so vitiated or nullified the grant that it ceased to be a legal basis upon which equities could rest that would be binding upon the conscience of the Mexican Government, but if the Supreme Government of Mexico had also refused their confirmation, the question would have presented itself in a very different aspect.

The parties have not seen fit to introduce in evidence the record of proceedings had before the Deputation, consequently the statement made by the petitioners as above referred to, is the only evidence which affords any information, as to what the precise action of the Deputation was upon the subject. Whether the Expediente was even forwarded to the Supreme Government, or whether that appointment acted upon the grant, are altogether unexplained.

39 SD
PAGE 32

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The land was sought for the purpose of Agriculture, and the Breeding of Cattle, the only two objects for which the Governor was authorized to make Grants.

The evidence shows that the land granted was devoted to both objects, and that the parties occupied it from the date of the first grant.

The object of the land which was settlement and cultivation was I think fully carried out in the case, as is made evident from the Deposition of Pico, and as well as from other papers on file in the cause.

The question of boundaries presents some difficulty, but as the Grants are by metes and bounds, and is intended by express terms, to embrace all the lands within the boundaries as expressed on the map referred to by the Governor in his first Concession, I think with the aid of the calls contained in the record of Juridical measurements, the officer will be able to trace the boundaries as they are delineated on the map.

The claim is therefore confirmed.
Filed in Office Decr 6th 1831.

Chas. Fisher Secy

Diego Olivera }
Leodoro Arellanes }
vs }
The United States }

Resced

In this case on hearing the proofs and allegations, it is adjudged by the Commission that the claim of the said petitioners is valid, and it is therefore ^{decreed} ~~decided~~ that the same be confirmed. The lands of which confirmation are hereby

made are known by the name of "Cruzada Lupe" and on the same Injunt which Diego Olivera & Teodoro Mellanes now reside, and bounded and described as follows to wit &c
Beginning at the Mezonos ~~at~~ at the

place called the mouth of Arroyo del asio Hloes, and running east the distance of two and a half leagues, to the road which ascends to the Mesa de Cipomo, where there is a stake, thence running over Hono de la Sora in a southerly direction the distance of three leagues, to the high peak of the Lomas de Sanje to an oak tree the most easterly distinguished, thence running over the same hills in a north-westerly direction the distance of one league and a quarter to the sea shore where there is "Morritas"; thence running over Canada the distance of two and a half leagues to the place of beginning.

Reference for further description to be had to a map which is a part of the document marked (A) and filed in this case.

Alphens Felix
Thompson Campbell
R. Aug. Thompson
Commissioners

Filed in Office Dec 6 1853.
Geo. Fisher Secy

39 SD
PAGE 34

200

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Office of the Board of Commissioners,

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

39 SD
PAGE 35

I, *George Fisher*, Secretary to
the Board of Commissioners to ascertain and settle the Private
Land Claims in the State of California, do hereby certify the
foregoing *Twenty three* pages, numbered from
1 to *33*, 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. *16* on the Docket of the said Board,
wherein *Diego Olvera, et al*, are

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



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

Geo. Fisher
G. Fisher

No. 39
39

U. S. DISTRICT COURT

Southern District of California.

No. *S. C.* Docket

THE UNITED STATES, *appt.*

vs.

39

Diego Rivera et al
for Guadalupe
in S. Luis Obispo
2 1/2 Sq. Leagues

TRANSCRIPT OF THE RECORD

FROM THE

BOARD OF U. S. LAND COMMISSION.

In Case No. 66

Rec^d 25 Aug. 1854

Filed, 26 Aug. 1854

A. S. Taylor
Sp. Cl.

39

No. 66



39 SD
PAGE 36

Office of the Attorney General of the United States,

Washington, 30th November 1854.

Diego Olivera Et al.

vs.

The United States.

{ 66.
}

You will please take notice that in the above case, decided by the Commissioners to ascertain and settle private land claims in the State of California in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 18th day of August 1854 the appeal in the district court of the United States for the Southern district of California will be prosecuted by the United States.

Cushing

Attorney General.

N^o 39.

U. S. District Court
Southern District.

The United States
vs.
Diego Olivera et al

Appeal Notice.

Filed Jan'y 10th 1855.

J. B. Love.
clerk.

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

Los Angeles County, State of California.

Diego Olivera et al.

vs.

The United States

N^o 39 (Transcript N^o 66)

39 SD
PAGE 38

To the Honorable Isaac S. H. Ogier, Judge of the
District Court of the United States for the Southern
District of California.

The petition of Pacificus Ord (of Los Angeles
County) Attorney of the United States for the South-
ern District of California, who petitions in this
behalf for the United States; and being present
here in Court in his proper person, in the name
and behalf of the United States, represents as fol-
-lows.

That heretofore, to wit, on or about the 24th day
of February A.D. 1852, Diego Olivera and Teodoro Arillas
presented a petition to the Commissioners to ascertain
and settle the private land claims in the State
of California, claiming the tract of land called
Guadalupe, in the County of San Luis Obispo,
in the words and figures following, viz.

"The Petitioners, Diego Olivera and Teodoro Aril-
lanis, respectfully show:"

"That on the 8th day of March A.D. 1837, the peti-
 "tioners applied to the Governor of California for
 "a grant of the tract of land known by the name
 "of Gaudalupe in the then jurisdiction of Santa
 "Barbara and now County of of San Luis O-
 "bispo." "That their petition was referred
 "by the Governor on the 9th day of March A.D.
 "1837 to the Ayuntamiento of Santa Barbara
 "for their report thereon, which body reported in
 "favor of the said petition on the 14th day of March
 "1837; and on the 8th day of April A.D. 1837, Juan
 "B. Alvarado Governor of California, made a de-
 "cree granting to the petitioners the aforesaid
 "tract of land, and directing its reference to the
 "Deputation of California for their Opinion there-
 "on; that on the return of the aforesaid docu-
 "ments to the said Governor Alvarado for his ac-
 "tion thereon, the said Juan B. Alvarado, Governor
 "of California, by virtue of authority in him
 "vested, did on the 21st day of March A.D. 1840,
 "grant, by formal title to the Petitioners the
 "said tract of land: called Gaudalupe
 "with the limits set forth in the Map ac-
 "companying the petition".

"That on the 23rd day of May 1840 the
 "said tract of land was duly surveyed and
 "the juridical possession of it given by the

39 SD
 PAGE 39

1840
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"proper Authority to the petitioners; Copies of
 "which Expediente is hereby annexed marked
 "A. with a translation marked B; and Co-
 "pies of the formal Grant and Map marked
 "C: with a Translation marked D: and a
 "copy of the act of survey and judicial pos-
 "session marked E with a Translation marked F."

"That ever since the 8th day of April
 "A.D. 1847, the petitioners have been and now are
 "in the quiet peaceful and undisputed posses-
 "sion of the said tract of land:

"That the said Tract of land has not been
 "surveyed by the U. S. Surveyor General: but
 "that it was surveyed by the proper authori-
 "ty at the time of giving the judicial pos-
 "session of it, and the boundaries marked
 "out, and that they are now well known."

"The petitioner relies for confirmation of
 "Title upon the original papers, copies of which
 "are hereto annexed, upon the minutes and
 "documents in the archives now in the posses-
 "sion of the Surveyor General, and upon
 "such other and further proofs as they may
 "be advised are necessary"

"Wherefore they pray the Com-
 "missioners to confirm to them the aforesaid
 "tract of Land."

39 SD

PAGE 40

Your petitioner further represents that thereafter, to wit on the 6th day of December A.D. 1853 the said Commission confirmed by final decree, the said Claim of the said Diego Olivera and Teodoro Arellanes in the words, and figures following, to wit:

"In this case on hearing the proofs and allegations, it is adjudged by the Commission that the claim of the said petitioner is valid, and it is therefore decreed that the same be confirmed."

"The lands of which confirmation are hereby made are known by the name of "Gaudalupi" and are the same upon which Diego Olivera & Teodoro Arellanes now reside, and bounded and described as follows to wit:

"Beginning at the "Wegons or at the place called the Mouth of Arroyo del Asio Hoco, and running east, the distance of two and a half leagues, to the road which ascends to the mesa de Nipoma, where there is a stake, thence running over Lomas de la Larga in a southerly direction, the distance of three leagues, to the high part of the Lomas de Asuefie to an oak tree the most easterly distinguished; thence running over the same hills in a north westerly direction the distance of one league and a quarter to the sea shore, where,

39 SD
PAGE 41

FILED
NOV 20 1853

"is 'Montas'; thence running over a Canada
"the distance of two and a half leagues to the
"place of beginning".

"Reference for further description to be had
"to a map which is a part of Document
"marked (A) and filed in this case.

"Alpheus Felch" }
"Thompson Campbell" }
"R. Aug. Thompson" }
"Commissioners"

"Filed in Office Dec. 6th 1853."

"Geo. Fisher, Secy."

That thereafter, to wit, on the 26th day of August
A.D. 1854 a duly certified transcript of the
said decree, and proceedings, and the papers
and evidence on which it was founded in said
cause, was filed in the office of the clerk of the
District Court of the United States for the South-
-ern District of California and marked N^o 39,
(transcript N^o 66) reference to which it is
prayed may be had and made a part of
this petition.

That on the 18th day of August A.D. 1854 the Hon-
-orable Caleb Cushing Attorney General of the
United States received a duly certified dupli-
-cate of said transcript of said final decree
and proceedings of said Commissioners in

39 SD
PAGE 42

said Cause (No 69), and the papers and evi-
-dence on which said decree was founded.

That thereafter, to wit, on the 10th day of January A.D.
1855, the said Attorney General of the United
States filed or caused to be filed, on behalf
of the United States, a notice with the said
Clerk of said District Court for the Southern Dis-
-trict of California, that the appeal, in said
cause of Diego Olivera et al., vs. the United
States, from the decision of the said Commis-
-sioners to ascertain and settle the private
land claims in the state of California, in the
District Court of the United States for the South-
-ern District of California would be prosecu-
-ted by the United States.

Your petitioner further represents that the
said land claimed as aforesaid is within
the jurisdiction of this Honorable Court.

And your petitioner further represents,
and insists that the said decree of said Com-
-missioners is erroneous, and ought to be re-
-viewed, reversed, and set aside, for many
errors and imperfections of law and evidence,
apparent in said certified transcript of said
cause, now in appeal from said Commissio-
-ners to this Honorable Court.

And your petitioner further represents

39 SD
PAGE 43

7

that the said claim is invalid, and the said decree erroneous, on the following grounds.

I. And the said Attorney denies all and singular each and every allegation in the said petition of said Claimants, to said ~~Colonization~~ ^{Concessions} of said date. And he further denies that any grant for said land was ever made as alleged in said petition. And he denies further that the said Claimant has shown any, or sufficient, evidence of the validity of the said claim.

II. That the said alleged grant of Governor Alvarado was made in violation of the 4th Article of the Colonization Law of Mexico of the 18th of August A.D. 1824, in this; that the land granted, as alleged by Claimant, was and is within ten leagues of the sea coast; and there is no evidence shown by Claimant, that the Supreme General Executive power of Mexico, previously approved of the colonization of the public lands in Upper California, lying within ten leagues of the sea coast.

And it is denied that such previous consent of said Supreme General Executive power of Mexico in such case was ever had.

III. That at the date of the said alleged grant, the said land, claimed as aforesaid, was oc-

39 SD

PAGE 44

-cupied and in the possession of the Missions of the territory of Upper California; and it was held and occupied, particularly, by the Mission of La Purisima; and ^{there were} ~~had~~ valuable improvements thereon, belonging to said Mission, And ^{the said land} could not therefore be colonized.

SD
PAGE 45

IV. That the said alleged grant has not the conditions required by, and is not made in entire conformity with the laws of Mexico of the 18th day of August A.D. 1824, and the regulations for the colonization of the Territories of Mexico of the 21st November A.D. 1828.

V. That the said alleged grant of land of said Juan B. Alvarado of the date of 21st March A.D. 1840 does not show the extent of, or sufficiently describe the land claimed; so that it can be identified and surveyed. And it is vague and uncertain.

VI. That the said alleged grant of said date, does not contain the conditions requiring the alleged grantees to cultivate or occupy the said land within a proportionate time; and ^{the further condition} ~~the possession~~ that if it is not so cultivated or occupied, the grant of the land should remain void, as required by law.

VII. That the alleged decree of said Governor, granting said land, to said Claimants, dated

8th April 1837, and referred to the Deputation of California by said Governor, was opposed and not approved by said Deputation.

VIII. That there is no evidence that said alleged Decree of said Governor for said land, of said date, opposed and not approved by said Deputation, as aforesaid, was ever reported to, or approved by the Supreme Government of Mexico; as required by law.

IX. That the said Governor Alvarado had no lawful authority to make and deliver to said claimants, the alleged formal grant of the said date of the 21st of March 1840, until after the said decree of the said date of the 8th of April 1837, had been approved by said Deputation, or the said Supreme Government of Mexico.

X. That Antonio Olvera, pretending to act as Justice of the Peace of Santa Barbara, had no lawful authority to survey and give juridical possession of the said land on the 23rd May 1840, as alleged, in virtue of the said alleged grant of said Juan P. Alvarado.

XI. That the said pretended juridical acts of survey and possession by said Olvera, of said date, were not made in conformity with the said alleged grant, and the map referred to therein; nor according to the ordinance, or

39 SD

PAGE 46

law. And they are vague and indefinite.

XII. That there is no evidence that the said Antonio Olibeaa was Justice of the Peace of Santa Barbara on or about the said 23rd of May 1840, and that he then had lawful authority to make the survey and give juridical possession to said Claimants, of said land. And it is denied that he was Justice of the Peace of said place, at said time, with lawful authority to perform said acts of survey and possession of said land.

XIII. That there is no sufficient evidence that the said Claimants ever cultivated, or occupied the said land within one year, or a reasonable time after the date of the said alleged grant.)

And no sufficient proof having been made by said Claimants of the allegations of their said petition, or in support of their said claim, filed as aforesaid, no decree ought to have been made, or grounded thereon; but the said petition ought to have been dismissed, and said claim rejected by said Commissioners, upon the grounds aforesaid.

And the said Claimants having no valid right or title, derived from the Spanish, or Mexican Government, to the said land claimed

by them, as aforesaid, the lawful right, or title in and to the said land, was acquired by, and it now belongs to the said United States, by virtue of the treaty of peace, friendship, limits, and settlement, with the Republic of Mexico, dated at the City of Gaudalupa Hidalgo, February 2nd AD. 1848.

Wherefore the said Pacificus Ord, Attorney of the United States for the Southern District of California, for and in behalf of the United States, by reason of the promises, and in pursuance of the act of Congress entitled "an act to ascertain, and settle the private land claims in the State of California", approved March 3rd AD. 1851, and the laws and statutes in such case made and provided, prays that the said Diego Olvera and Teodoro Arrellanes may be served with copies of this petition; and that this Honorable Court will review the said decision, or final decree of confirmation, of said Commissioners to ascertain and settle the private land claims in the state of California, and decide on the validity of the said claim of the said Diego Olvera and Teodoro Arrellanes, for said land claimed and confirmed as aforesaid; and that the same may be decreed invalid.

39 SD
PAGE 48

48
20

And all such other orders, judgements, or
decrees, as may be just. With costs, and gen-
-eral relief.

P. Ord

Attorney of the United States
for the Southern District of Cal.

39 SD
PAGE 49

20

N^o 39

2

N. S. Dist. Court

S. Dist. of Cal.

Riggs Olivera et al

vs

The United States

Petition of U. States
for Review

Silva Aug. 13th 1855

J. E. San
cl. R.

39 SD

PAGE 50

Pro Dist. Ct.

United States of America, }
Southern District of California. } SS.

TO

The President of the United States,

Diego Olivera & Theodore Mellanes.

39 SD
PAGE 51

GREETING:

Take Notice, That a Petition, a copy of which is herewith served upon you, has been filed against you, and each of you, in the District Court of the United States, in and for the Southern District of California, on the *thirteenth* day of *August*, 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 *Pacificus Ord, Attorney of the*

United States for the Southern District of California, in behalf of the United States praying the said Court to renew, upon the grounds therein set forth, the decision of final Confirmation of the Board of U. S. Land Commissioners to ascertain and settle the private land claims in the State of California, of the claims of Diego Olivera & Theodore Mellanes for a tract of land called Gaudalupe in the County of San Luis Obispo California, & presented by you to said Commissioners on or about the 24th day of February A.D. 1852, and by them confirmed on the 6th day of December A.D. 1853.

and that you, and each of 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 that judgment by default will be taken against you, and each of you, and the prayer of the said petitioner will be granted, with costs.

the Plaintiff will apply to the Court for the relief demanded therein.

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the Seal of the said Court, this *Twenty* day of *September* in the year of our Lord one thousand eight hundred and fifty-*five* at Los Angeles aforesaid.

B. C. Jan.
Clerk.



Copying Summons 4 folios .90
Serving Summons 3.00
Petition 2.00
\$6.90

No. 39

United States of America,
Southern District of California,
U. S. DISTRICT COURT.

Diego Olivera et al

adv
457

of the United States.

SUMMONS.

Received Sept 12th 1855
Edward Hunter
U.S. Marshal

39 SD
PAGE 52

I served this summons along with the proper copy of the petition upon *Hallock*
Atty for appeller, by delivering to
him personally a true copy of the
same
at *Los Angeles* in the Southern District of California on
the *twenty fourth* day of *September* A. D. 1855.

Sworn to and subscribed before me,

Clerk. }

Edward Hunter
U.S. Marshal.

By *R. S. Jones* deputy

United States of America, } SS.
Southern District of California.

TO

The President of the United States,

Diego Olivera, & Theodoro Anellanes.

39 SD

PAGE 53

GREETING :

Take Notice, That a Petition, a copy of which is herewith served upon you, has been filed against you, and each of you, in the District Court of the United States, in and for the Southern District of California, on the *Thirteenth* day of *August* 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

Pacificus Ord, Attorney of the United States for the Southern District of California, in behalf of the United States, praying the Said Court to Review, upon the grounds therein set forth, the decision of final Confirmation of the Board of U. S. Land Commissioners to ascertain and settle the private land claims in the State of California, of the Claim of Diego Olivera & Theodoro Anellanes for a tract of land called Gaudalupi in the County of San Luis Obispo California, & presented by you to said Commissioners on or about the 24th day of February A.D. 1852, and by them confirmed on the 6th day of December A.D. 1853.

and that you, and each of 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 that judgment by default will be taken against you, and each of you, and the prayer of the said petitioner will be granted, with costs. *the plaintiff will apply to the Court for the relief demanded therein.*

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the Seal of the said Court, this *Twelfth* day of *September* in the year of our Lord one thousand eight hundred and fifty-*five* at Los Angeles aforesaid.

J. O. Farr
Clerk.

No. 39.

Marshals Fees.
Copying Summons 4 folios .90
Serving Summons 3.00
" Petition 3.00
\$ 6.90

United States of America,
Southern District of California,
U. S. District Court.

Diego Olvera et al
vs
The United States.

SUMMONS.

Received Sept 12th 1855
Edward Hunter
U. S. Marshal

39 SD
PAGE 54

I served this summons along with the proper copy of the petition upon *Hallock*
Atty for appellants by delivering to
him personally a true copy of the
same

at *Los Angeles* in the Southern District of California on
the *twenty fourth* day of *September* A. D. 1855.

Sworn to and subscribed before me,

Clerk. } *Edward Hunter*
U. S. Marshal.

By *R. L. Jones*,
Deputy

No 39.

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

The United States

appellants

vs.

Teodoro Arrellanes & Diego Olinera

Appellees

Answer of appellees

39 SD
PAGE 55

Teodoro Arrellanes & Diego Olinera, appellees,
appear by their attorneys, and for answer
to the petition of the United States filed
herein, say: That their title to the land
called "Guadalupe", as set forth and described
in their petition to the United States Land
Commissioners, and in the documentary and
other evidence filed in this case, is
a good and valid title; and they pray
this Honorable court to affirm the
decision of the Board of Commissioners
and to decree their title to be valid

Halluk Beachy & Billings
Attys for appellees.

Los Angeles Sept 22^d 1855.

~~No 39~~ No 39 3

The United States, appellants

vs
Stephen Lincoln et al,
appellees

Answer of appellees

Filed Sept: 24th 1855

A. C. Carter

By Wm W. Phelps

39 SD
PAGE 56

No 39.

U.S. Dist Court.
South Dist of Cal.

Diego Oliveira et al. appells

vs.

The United States, appls.

Order of appeal to the Supreme
Court on motion of C. D. W. W.
Atty.

Filed Oct 18th 1855.

J. E. Jones
Clerk.

39 SD
PAGE 58

California Land Claims

Attorney General's Office

4 September 1856

39 SD

PAGE 59

Sir:

In the case of the claim of Diego Olivera et al, confirmed to the claimants by the Commissioner, Case no. sixty-six (66), and also confirmed on appeal by the District Court, - appeal in the Supreme Court will not be prosecuted by the United States.

I am

Respectfully

Anthony

Pacificus Ord Esq

U.S. Atty for the

Sacramento Dist appeal.

39
Diego Olvera et al.

66

39 SD
PAGE 60

1836

In the District Court of the
United States, within and for the
Southern District of California

Hon. Isaac S. H. Jew Judge

December Term 1855

39 SD
PAGE 61

The United States

Appellants

Diego Clevera et al

Appellees

Roller No 39

Transcript from the Board of Land Commissioners No 66

In pursuance of a letter from the Attorney General of
the United States, herewith annexed, giving notice that in
the above cause the appeal to the Supreme Court will
not be prosecuted by the United States. It is hereby
stipulated and agreed by and between the parties that
the order granting an appeal to the Supreme Court here-
tofore made in the above cause be vacated, and
that the decree of the Court heretofore rendered in
this cause may by order of the Court be made final

T. W. Dist. Atty.

Kullback Peck & B. Henry
Atty. of Appellees.

U.S. District Court
San Francisco Cal.

No 39

The United States
Appellant

^{vs}
Neyo Olvera et al
Appellees

Stipulation
to vacate order of
Appeal to Supreme Court

Filed this 5th February
1854
Clerk
J. W. Coleman
clerk

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

Now appear S. N. Oyer, Judge

December Term 1850

The United States

Appellants

Diego Olvera et al.

Appellees

Writ of Habeas Corpus No. 39

Transcript from the Board of Land Commissioners No. 565

The Attorney General of the United States having given notice that the appeal to the Supreme Court from the decision of this Court in the above entitled cause will not be prosecuted by the United States, and a stipulation having been entered into by the United States District Attorney and the Attorneys of the Claimant that they agreed granting an appeal to the Supreme Court heretofore made in this cause be vacated, and that the decree of this Court heretofore rendered in this cause may by Order of the Court be made final, it is ordered, adjudged and decreed that the Order granting an appeal to the Supreme Court heretofore made in this cause be and the same is hereby vacated, and that the Claimants have leave to proceed under the decree of this Court heretofore

39 SD
PAGE 63

PRICE
20

rendered in this Cause as under a final Decree
Lawrence M. Ogden
U. S. District Judge

U. S. District Court
South & West Colo
No. 39.

The United States
vs
Allego Olvera et al
Appellants

Order
Vacating Appeal

Filed Feb 5th 1857
G. M. O.
Clerk

California Land Claims,
Attorney General's Office
13 Feb. 1857.

39 SD
PAGE 65

Mr:

In the case of the claim of
Diego Olivera, et al: confirmed
to the claimants by the Commis-
sioners, case no. sixty-six (66),
appeal will not be prosecuted
by the United States.

I am,

Respectfully,

[Signature]

Placitas M Esq
U. S. Attorney
Los Angeles -

No. 39

Filed 4th March 1858 for
8th June 1857

C. S. S. Clerk
J. A. Coleman
Deputy

39 SD

PAGE 66

Office of the Surveyor General of the United States, }
FOR CALIFORNIA. }

I, J. W. MANDEVILLE, United States Surveyor General, for the State of California, do hereby certify that the Rancho "Guadalupe"

confirmed to D. Olivera et al -
has been surveyed by this office, and that the survey and plat was approved by the U. S. Surveyor General, on the twenty third day of January 1861; that I have caused to be published, once a week, for four weeks successively, in two newspapers, to wit: the Santa Barbara Gazette published in the County of Santa Barbara State of California being the newspaper published nearest to where the said Rancho is located, the first publication being on the 14th day of February 1861, and the last, on the seventh day of March 1861; also, in the Los Angeles Star - a newspaper published in the City and County of Los Angeles, State aforesaid - the first publication being on the twenty third day of February 1861, and the last on the ~~Sixteenth~~ day of March 1861, a notice that the said land had been surveyed, and a plat made thereof, and the survey and plat approved by me. And I do further certify, that the said survey and plat were retained in my office during all of said four weeks, and until the expiration thereof, subject to inspection; and I further certify, that no order for the return thereof to the U. S. District Court, has been served upon me.

In Testimony Whereof, I have hereunto signed my name officially, and caused my Seal of office to be affixed, at the City of San Francisco, this thirty first day of May 1861

J. W. Mandeville

U. S. Surveyor General for California.

W. S. Surber's Office
San Francisco
May 18 1863

A true full and correct copy of the original record in this office

W. S. Surber

4
No 39

W. S. Dillmont
- South Dist Galv

Diego Olvera et al

(m)

The United States

Certif of S. Gen. that
publication of Survey has
been made

Filed May 23/63

John S. Wheeler
clerk

39 SD
PAGE 68

Office of the Surveyor General of the United States, }
FOR CALIFORNIA. }

S. Upson,

~~J. J. W. MANDEVILLE~~, United States Surveyor General, for the State of California, do hereby certify that the Rancho "Guadalupe,"

confirmed to *D. Olvera and J. Mellanes*, has been surveyed by this office, and that the survey and plat was approved by the U. S. Surveyor General, on the _____ day of _____

~~186~~ ; that I have caused to be published, once a week, for four weeks successively, in two newspapers, to wit: the "*Wilmington Journal*" published in the County of *Los Angeles*, State of *California*, being the newspaper published nearest to where the said Rancho is located, the first publication being on the *23^d* day of *March*, 1867, and the last, on the *13^o* day of *April*, 1867; also, in the "*Times*"

a newspaper published in the *City and County of San Francisco*, State aforesaid,

the first publication being on the *13^o* day of *March*, 1867, and the last on the *3^d* day of *April*, 1867, a notice that the said land had been surveyed, and a plat made thereof, and the survey and plat approved by me. And I do further certify, that the said survey and plat were retained in my office during all of ^{*nine days*} ~~said four weeks~~, and until the expiration thereof, subject to inspection; and I further certify, that no order

~~for the return thereof to the U. S. District Court, has been served upon me. protest against said survey has been filed in this office.~~

In Testimony Whereof, I have hereunto signed my name officially, and caused my Seal of office to be affixed, at the City of San Francisco, this *8^o* day of *January*, 1868



~~U. S. Surveyor General for California.~~

S. Upson
U. S. Surv. Genl

n^o 39

U. S. Dist. Court

Dist. Cal^o

The United States
Appellant

vs.

Diego Olivera & Co
Appellee

Serv. Genl^l Certificate

Filed January 8th 1868

Geo. Whitney clk

per

[Signature]
D.C.

The United States

39 SD

Appellants

PAGE 71

107

Siego Oluecia & Teodoro
Mellauer - Appellees

On 8. March 1837 Appellees, solicited
Governor Alvarado for a tract of land called
"Guadalupe". A reference of this pe-
-tition was made to the Ayuntamiento
of Santa Barbara for information as
was usual in similar cases, - a favor-
-able ^{report} was made, whereupon Gov. Al-
-varado ~~made~~ ^{made} a concession declaring
the appellants to be owners in fee of the
land known as "Guadalupe" marked
out in the map which accompanied
the petition and within the boundaries
expressed therein, subject to the condi-
-tions established by the Law of 18 Aug.
1824 and the general Regulations of 1828
on 21. ^{which} ~~in~~ conclusion with a direction
that the expediente be referred to the
Departmental Assembly for its appro-
-bation in which case the parties
interested were ~~present~~ ^{to be} duly
notified of this decree, and persons
then still again to be notified.
This concession of Gov Alvarado
is dated April 8. 1837 - There is no
other documentary title evidence
on file respecting this concession
of 1837, save the petition ^{to} the Governor,

in

his decree of reference of it to the Ayuntamiento of Santa Barbara, then report thereon and his concession of the land.

PAGE 39 SD
72

The next document in file is a copy of a second petition prepared by the Appellees to Gov Alvarado dated 12 March 1840. This petition states that his Excellency having granted in conformity to the Colony ^{laws} other ^{to} the Appellees a tract of land known as "Gradiente" they (the Appellees) had taken possession ^{of} and retained it until the present time; but as the grant which had been given them, was ^{opposed} ~~referred~~ by the Deputacion and the subject was to be directed ^(referred) to the Superior Government, the Appellees, in accord ~~with~~ ^{the} petition that their title "may be" made over again and that Juaciel Rossemon may be given ~~title~~ in order to avoid questions with the neighbors, and to enable them to dedicate themselves, with more liberty to its improvement.

In conformity with the petition Gov Alvarado issued to Appellees a Grant dated 21 March 1840 in the usual form and with the ordinary conditions, ^(except as to making a home within a year) Annexed for the land claimed, and subsequently, in May of same year Indivision possession of the land was delivered to the Appellees.

The parcel evidence establishes the fact that the appellees have occupied the premises with cattle, hewn, & concrete, had a home on it since the year 1840 and as ^{the} witness believes Antero in that time. The genuineness of the documentary title is established, and the several objections made to it, having been disposed of, by decisions of the Court heretofore made in other cases, with the exception of one, ^{to the one,} the Court will now address two.

That objection is embodied in the three following forms,

1. That the concension of Gen Alvarado of 8. April 1837 was not approved, but was ~~not~~ approved by the Separation.
 2. That there is no evidence to show an approval of said concension by the Supreme Government of Mexico.
 3. That Gen Alvarado had no power to make and deliver the formal grant of 23 May 1840 until the previous grant of 8. April 1837 had been approved by the said Separation or the Supreme Government of Mexico.
- Under the decisions of the Supreme Court and of this Tribunal the approval by the Separation or assembly is not considered as *Constitutiva* part

of the title, and ~~the failure to obtain it~~
in a case like the present, where
possession was delivered to ~~the~~ ^{the} party
under the authority of the law,
and his substantial compliance
with the law is discharged
by an occupancy of the land.
The consideration of the Grant
has been proved, ~~and~~ ^{in the} finding of a
claim, to obtain ~~the~~ ^{the} approval
cannot be made over the Grant.

39 SD
PAGE 74

It would follow therefore, that the
claim of appellants, predicated upon
the grant of Gov. Alvarado of
23 May 1840, and followed by an
occupation of the granted pre-
mise, would constitute a per-
fect title good title thereto.

This must assuredly be the case
under the action of the Legation
- mental assembly on the previous
concession of 8 April 1837 be held
to incapitate the Government from
ever granting the same land to
the appellants, without the per-
- mission of the Supreme Government
of Mexico, or the approval of the
Assembly.

All the evidence we have of the ac-
- tion of the Assembly is derived
from the record petition to Gov. Al-
- varado by the appellants, of 12 March
1840. ~~It has been~~ From that doc-
- ument we learn that said concession

was opposed by the body and that the
 same was ^{to be} directed to the Superior Go-
 -vernment. From this language it
 is by no means clear that anything
 was meant ^{than} that not meeting
 with approval, it was sent back to
 the Superior Government of the State
 which was represented by the Gover-
 -nor in his capacity for recommendation. That
 Functionary when issuing the second
 grant of 21. March 1840 does not pur-
 -sue the usual course of referring the
 second petition for information; but
 acts up ^{on} and refers ^{in it} to the necessary mea-
 -sures and examination, or having
 been previously made. Now he can
 only have referred to those taken ^{and}
 made on the first petition of 8. ^{April} 1837
 for ~~some~~ as there had been none other.
 But without pausing to dwell on this
 point, and conceding that the refer-
 -ence of the concession of 8. April 1837
 was not to the Superior Government, but
 was to be submitted to the Supreme
 Government of Mexico, the inquiry re-
 -mains, what ^{is} ~~is~~ the effect of such
 -concession on the action of the Superi-
 -or Government?

In an anecdotal case C. Petros 729, The Su-
 -preme Court U.S. say, "The principle
 which prevails as to all public grants of
 land, or acts of public ^{officers} in issuing warrants, &c
 is, that the public acts of public officers,
 prospecting

NO 39 SD
 PAGE 75

39 SD
PAGE 76

purporting to be an exercise in an official capacity and by public authority, shall not be presumed to be "usurped but a legitimate authority, necessarily given or subsequently ratified which is equivalent" and again they say "He ^{was} ~~permeated~~ Contravened a grant executed by the lawful authority with all the solemnities required by law take upon himself the burden of showing, that the officer has transcended the powers conferred upon him, or that the transaction is tainted with fraud". There is no pretense of fraud in this case, and the very question is, ~~has~~ ^{has it been} shown that Gov. Alvares has transcended his powers?

Under the circumstances of this case, his ^{grant} ~~grant~~ ^{ordinarily} ~~grant~~ need be sufficient without any opinion of the Department or approval, but we are asked to suppose that the powers of the Governor have been transcended ~~for~~ ⁱⁿ ~~the~~ ^{the} issuing his second grant because ^{the first grant} ~~it~~ ^{did not} meet with the approval of the Assembly who directed it to be sent to the Supreme Court. We are to suppose that instead of waiting for any action of the Government, Gov. Alvares assumed to act. But ~~it is~~ ~~no~~ ~~presumption~~ we have seen that all presumption is in favor of the act of a public officer. ~~But~~

Sustained

39 SD
PAGE 77

by such legal presumptions it is it not rather to be inferred, that when, after an interval of three years, at the instance of appellee, he issued a grant, he did so with the assent, ~~expressly intended~~, of the Supreme Government? Not only the legal presumption in favor of the acts of public officers, conduct to such conclusion, but such inference is fortified by other considerations.

The first grant was made in 1837, the second in 1840. Of both these grants, and the proceedings in relation to them, the legal presumption is, that the Supreme Government had notice, at, or near the time of their respective occurrence. The 9th article of the general regulations of 21. Nov. 1828 requires, that of all petitions, that may be presented, and concessions that may be made, corresponding entries shall be made, and these shall be sent to the Supreme Government each three months, & deb. in an unstarted account."

With ^{from} this knowledge which it is to be legally presumed may be brought home to ~~it~~, ^{the Supreme Government} from the silence of the ~~Supreme~~ Government during the interval between 1837, & 1840, from
the

fact that the Governor did in the latter
year issue a grant for the land, &
from the inference which arises in
favor of the legitimate exercise of power
by a granting officer to whom such
power was delegated, from ~~each~~ ^{each} and all
of these, the Council presume that
the assent of the Supreme Government
was given to the Grant of 1840 of such
assent was ~~not~~ in fact necessary
by reason of the action of the Territorial
Legislature in relation to the Grant
of 1837 -

This legal inference this Court is
inclined to make readily to make
by ^{reason} of the Equity which arises in
this case in favor of appellants.

Under this grant they continued
in possession of the land granted,
cultivating it, & thus, conforming
with policy of the Mexican Colo-
nization laws and discharging
the obligations imposed on them
by the Grant. Thus they continued
to do for some six years, down to
the execution of the Treaty of Guadalupe
- since that time, and in violation of
the enjoyment of their property
by the Government from whom
they had acquired it. Under
such circumstances, a previous assent
to the grant is not to be presumed, its
subsequent ratification (which is
equivalent)

on the Transcript of the proceedings and
decision of the said Commission and
on the paper and evidence on which
said decision was founded, and it
appearing to the Court that the said
Transcript has been duly filed ac-
cording to law, and counsel for
the respective parties having been
heard; It is ordered, adjudged, and
decree that the claim of the said
appellee, to a valid claim and
that said claim is hereby confined
to a certain tract of land known by
the name of "Guadalupe" being the
same land on which the appellee
the said Grego Olvera and the
said Teodoro ~~the~~ Arrellanes re-
sided, for particular description
of which land reference will be had
to the Map and Judicial Record
of possession of file in the Transcript
of the Record in this case,

PAGE 39 SD 80

39
SD

The United States
Appellants

+

S. Blwin et al
appellees

"Quadrato"

et al

39 SD
PAGE 81