CASE NO.
314
SOUTHERN DISTRICT

CIENEGA DEL GAVILAN GRANT

JOSE Y. LIMANTOUR
CLAIMANT

LAND CASE #314 ND pgs. 244

TRANSCRIPT

OF THE

PROCEEDINGS

IN CASE

NO. 782.

José G. Limantour CLAIMANT

VS.

THE UNITED STATES, DEFENDANT,

FOR THE PLACE NAMED

"Ciénega del Gavilan."

Office of the Board of Commissioners,

To ascertain and settle the Private Land Claims

IN THE STATE OF CALIFORNIA.

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

The Petition of José Y. Limantour, *for the Place named* "Cienega del Gavilan", *was presented, and ordered to be filed and docketed with No.* 782, *and is as follows, to wit;*

(Vide page 3 *of this Transcript.)*

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

San Francisco January 9, 1855.
Case No. 782, Jose Y. Limantour, for the place named "Cienega del Gavilan", was ordered to placed at the foot of the 4th Class Cases on the Trial Docket.

San Francisco March 20, 1855.
In the same Case, the Counsel for the Claimant filed the following Affidavit, to wit:
(Vide page 5 of this Transcript.)
And the prayer of the petitioner therein was taken under advisement by the Board.

San Francisco March 22, 1855.
Case No. 782 was assigned for hearing on the 30th day of April next.

San Francisco April 10, 1855.
Case No. 782 was submitted without argument

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and taken under advisement by the Board.

San Francisco April 24, 1855.

In the same Case Commissioner R. Aug. Thompson delivered the Opinion of the Board rejecting the claim;

(Vide page 15 of this Transcript.)

And the following order was made, to wit:

(Vide page 17 of this Transcript.)

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To the Honorable Board of Commissioners for settling private land claims in California —

Petition.

Your petitioner José Y. Limantour of the city of Mexico respectfully sheweth your Honorable Board, that a certain tract of land was granted to Dn. Antonio Chaiz, a native Mexican citizen in the State of California by Dn. Manuel Micheltorena on the twenty eighth (26th) day of October one thousand eight hundred and forty three (1843) as will more fully appear by reference to the grant thereof, a copy and translation whereof are herewith presented marked respectively B and C. —

That the said Dn. Manuel Micheltorena was at the time of making said grant acting Governor of said California under the Government of Mexico, with full and extraordinary powers to make the grant aforesaid. —

That your petitioner in good faith and for good and valuable consideration purchased the said tract of land granted as aforesaid, from the said grantee thereof, Dn. Antonio Chaiz on the first (1st) day of February one thousand eight hundred and forty four (1844) as will more fully appear by reference to the deed of sale thereof, from said grantee to this petitioner, bearing date on said day of February, a copy and translation whereof are herewith presented, marked respectively D and E. —

That your petitioner is the lawful owner and present claimant of the tract of land so as aforesaid granted and conveyed. —

That the quantity of land claimed by your petitioner is Eleven (11) square leagues (once sitios de ganado mayor) —

That the description, bounds and

locality of said tract of land, are as follows to wit;— The place known by the name of Sierra-ga del Gabilan, situated in the mountains of the same name, in the comprehension of this district and bounded on the North by the Rancho of Dn. Joaquin Gomez and that of Dn. Nicolas Bolton.

That the said tract of land has not been surveyed by the Surveyor General of the United States.

That your petitioner is not aware of any conflicting claim to the said tract of land known as Sierraga del Gabilan —

Therefore your petitioner presents his said claim to this Honorable Board and prays that said Board will pronounce in favor of the same and will confirm the validity thereof, and the right and title of this petitioner to the said described lands & premises —

Dated at San Francisco March 1st 1853.

N. W. Chittenden.
Robert Simson.
Attorneys & Counsel for claimant.

Filed in Office March 2 1853.
Geo: Fisher.
Secy

5—

U. S. Board of Land Commissioners for settling private land claims in California—

No 782.

Affidavit.

Robert Emmon, being duly sworn, deposes and says, that he is claimants Attorney in a certain cause now pending before said Board, numbered 782, upon the docket thereof.

That the claimant in said cause is now absent from the State of California being as the deponent is informed and believes in the Republic of Mexico—

That as the deponent is informed and believes the said claimant has been and now is detained in said Mexico by reason of the revolutionary disturbances now prevailing in that country; that when said claimant left California he intended to be only temporarily absent therefrom and to return thereto within a few months after his leaving the same.

That the deponent cannot prepare the said cause for submission to this Board without the presence of the said claimant therein or without said claimants written directions in answer to letters long since sent to him, in respect to the conduct of said cause, which answers and also the presence of said claimant the deponent believes to have been delayed by the said revolutionary disturbances.

That the deponent is desirous to postpone the submission of the said cause for at least three months in order to give further time for the return of said claimant or for the receipt of communications from him respecting the said claim and the conduct of the said case ——

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Robert Simson

Subscribed and sworn to
before me in this 20th
day of March A. D. 1855.
S. B. Farrell.
Comr.

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Filed in Office March 20th 1855.
Geo: Fisher.
Clerk

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B.
Grant.

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Sello Primero Ocho Pesos.
Habilitado provisionalmente por la Aduana Marítima del Puerto de Monterey, en el Departamento de las Californias, para el año de mil ochocientos cuarenta y tres.
Micheltorena. Manuel Castañares.

Adª Maritª de Monty.

El Ciudadano Manuel Micheltorena General de Brigada del Ejército Mejicano Ayudante General de la plana Mayor del Mismo Gobernador y Comandante General del Departamento de las Californias.

Por cuanto D. Antonio Chaves Mejicano por nacimiento ha pretendido para su beneficio personal, el parage conocido con el nombre de Sienega del Gabilan situado en la Sierra del mismo nombre en la comprehension de este Partido y colindante por el Norte con el Ranchito de D. Joaquin Gomez y el de D. Nicolas Butron conforme espresa la solicitud y el diseño: practicadas previamente las diligencias y averiguaciones concernientes segun lo dispuesto por leyes y reglamentos de la Materia, usando de las amplias facultades con que me hallo investido á nombre de la Nacion Mejicana, he venido en concederle en propiedad el mencionado parage bajo las condiciones siguientes:

1ª Podrá cercarlo sin perjuicio de las travesías caminos y servidumbres

y desprotado libre y esclusivamente destinandolo al uso ó cultivo que mas le acomode.

2ª El terreno de que se hace donacion es de ocho sitios de ganado mayor. El Juez que diere la posesion lo hará medir conforme á ordenanza quedando el sobrante que resulte á la nacion para los usos convenientes.

En consecuencia mando que teniendose por firme y valedero el presente titulo se tome razon de él en el libro á que corresponda y se entregue al interesado para su resguardo y demas fines.

Dado en Monterey, Capital del Departamento á veinte y seis de Octubre de mil ochocientos cuarenta y tres.

(Firmado)
Manl. Michelt.

(Firmado)
Manl. Jimeno
Sio.

Queda tomada razon de esta concesion en el libro respectivo.
Jimeno.

Filed in Office March 2, 1853.
Geo. Fisher
Secy.

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First Seal, Eight Dollars —
Qualified provisionally for the Maritime Custom House of the Port of Monterey, in the Department of the Californias, for the years one thousand eight hundred and forty three.
Micheltorena. Manuel Castanares.

Translation.

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Adⁿ Mayt.ᵃ
de Monty

The citizen Manuel Micheltorena, Brigadier General of the Am Mexican Army, Adjutant General of the grand staff of the same Governor and Commander General of the Department of the Californias.

Whereas Dⁿ Antonio Chaves, Mexican by birth, has asked for his personal benefit, the place known by the name of Sienega del Gabilan, situated in the mountain of the same name in the comprehension of this district, and bounded on the North by the Ranchos of Dⁿ Joaquin Gomez, and that of Dⁿ Nicolas Buitron, conformably to what is set forth in the petition and map; the necessary steps and proofs concerning the same having been previously taken and made in the matter as the laws and regulations prescribe, I making use of the ample power with which I am invested, in the name of the Mexican Nation, have and do hereby grant to him in fee the said place under the following conditions —

1st. He shall enclose it without prejudice to the cross ways, roads and commons, and enjoy the same freely and exclusively, destining it to the uses or cultivation that may suit him best —

2nd. The land of which grant is made

consists of eleven square leagues. The Judge who may give possession shall cause the same to be measured conformably to the ordinance, leaving the advante that results to the Nation for convenient uses —

In consequence I order that the present title shall be held good and valid, and the same be registered in the proper book, and be delivered to the grantee for his security and other purposes —

Given in Monterey, Capital of the Department this twenty eighth of October one thousand eight hundred and forty three —

(Signed) Manl. Michel Ta.
(Signed) Manl. Jimeno
Secr.

Register made of this grant in the proper book.

Jimeno

Filed in Office March 2 1853
Geo: Fisher.
Secy.

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D.
Deed from
Ant°. Chaves
— to —
Limantour.

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Sello Cuarto Dos Reales.
Habilitado provisionalmente por la Aduana Maritima del Puerto de Monterey en el Departamento de las California para los años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

Mihelltorena. Pablo de la Guerra.
Ad.ª Marit.ª
de Monty

Por el presente conste que yo Antonio Chaves y Jose Limantour en la mejor forma de derecho hemos convenido en lo siguiente: El primero vende al segundo el terreno nombrado Cienega del Gabilan que le pertenece en propiedad por titulo que expedió en su favor en 27 de Obre. del año p.p.ª el Supremo Gobierno del Departamento, colindante con el Rancho de D. Joaquin Gomez y el de D. Nicolas Buron en la cantidad de quinientos sesenta pesos que se obliga Limantour á entregarle en numerario en todo el presente ano y con la condicion de que no podrá tomar posesion de dho. ~~terreno~~ terreno mientras no haya cumplido con este compromiso.

Y para el resguardo y debida constancia lo firmamos por ante tres testigos dandole á este documento valor de escritura publica. Monterey de la Alta California Febrero primero de mil ochocientos cuarenta y cuatro.

(Firmado) Jose Antonio Chaves
Limantour

Como testigo: Como testigo: Como testigo:
Manl. Castro. Franco. Rico. Franco. Arce.

Filed in Office March 2, 1852. — Geo. Fisher, Secy.

Fourth Seal, Two Reals.

Qualified provisionally for the Maritime Custom House of the Port of Monterey, in the Department of the California, for the years one thousand eight hundred and forty four and one thousand eight hundred and forty five –

Micheltorena. Pablo de la Guerra.

E.
Translation.

Ad.a Mart.a de Mont.y

By the present witness, that I Antonio Chaix and Inc.o Limantour in the most lawful form have agreed as follows: The first party sells to the second party the land named Buenaventura del Gabilan, that belong to him in fee by the title issued in his favor the 27th of October of the year last past by the Supreme Government of the Department, bounded by the Rancho of Dn. Joaquin Gomez & that of Dn. Nicolas Buttron for the sum of five hundred and sixty dollars, that Limantour obligates himself to pay him in hard cash in all of the present year, and with the condition that he shall not take possession of said land until the agreement be fulfilled.

And for security and the evidence we sign this in presence of three witnesses giving to this said document the force of a public instrument – Monterey Alta California, February first, one thousand eight hundred and forty four –

(Signed) Jose A. Chaix.
" Limantour –

As Witness
Manl. Castro.

As Witness
Francco. Rico.

As Witness. Francco. Arce –

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Filed in Office March 2' 1853.
Geo: Fisher.
Secy.

No 782

José G. Leimantour vs The United States } "Dienega"

Opinion by Com. Thompson

No proofs of any kind have been adduced in support of this claim; it is therefore rejected.

Filed in Office April 24. 1855
Geo. Fisher Sec.

782

José G. Leimantour vs The United States }

Decree

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 of the same be and is hereby denied.

R. Aug Thompson
A. B. Farwell

Commissioners

Filed in Office April 24. 1855.
Geo. Fisher Sec

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No 782

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

Order

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.

Office of the Board of Commissioners,

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

I, George Fisher — Secretary to the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, do hereby certify the foregoing Seventeen — pages, numbered from 1 to 17, both inclusive, to contain a true, correct and full Transcript of the Record of the Proceedings and of the Decision of the said Board, of the Documentary Evidence and of the Testimony of the Witnesses, upon which the same is founded, on file in this Office, in Case No. 782 on the Docket of the said Board, wherein

José V. Linantour is —

the Claimant against the United States, for the place known by the name of "Cienega del Gavilan" —

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

Geo. Fisher

Sec.

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U. S. DISTRICT COURT,

Southern District of California.

No. 314.

THE UNITED STATES,

vs.

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José G. Limantour

Cienega del Cavalan.

TRANSCRIPT OF THE RECORD

FROM THE

BOARD OF U. S. LAND COMMISSIONERS,

In Case No. 782

Filed, Oct 23 185 5.

G. C. Fan
Clk.

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

Case No. 314, } In the Southern District. —

Sir.

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

Yours respectfully

Campbell, Taylor & Beckh
Atty's for claimant

San Fr.co
Dec. 8th 1854.

To the Clerk of the
U. S. District Court
Southern District of California.

U. S. District Court
Southern District of
California. —

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Case No. 314.

Notice of appeal
from the Board of
U. S. Land Commissioners.

Filed Dec 13, 1854.
J. S. Lowe.
Clk.

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

José G. Limantour,
Claimant & Appellant
vs
The United States
Deft. and Appellee

Case No. 314.
"Cienega del Gabilan"
Transcript No. 782

Take notice that the Appeal taken in the above cause on the 23d day of October A.D. 1855, from the final decision of the United States Board of Land Commissioners to ascertain and settle the private land claims in the State of California, rejecting the claim of the above named José G. Limantour, for the land called "Cienega del Gabilan", will be prosecuted by said Claimant in the District Court of the United States for the Southern District of California.

J R Scott
Attorney for Appellant.

ap. 21/56

Case No. 314 Docket

in U. S. Dist. Court, South Dist. of California.

José G. Limantour
Appellant
vs
The United States
Appellee.

Notice of Appeal.

Filed this April 21st 1856.

C. E. Carr Clk.
By A. Morgan Depy.

United States District Court
Southern District of California

No.

José Y. Limantour
vs
The United States of America

The United States Land Commission to ascertain and settle private land claims in the State of California, having rendered its decision in the above case designated on the Docket of said Commission as No: 782 against the claim and title of the said Claimant to the place or land called "Cienega del Gabilan" situated in said District Notice is hereby given that it is the intention of the said Claimant to prosecute his appeal from the said decision.

April 15th 1856.

Robert Simson
Claimants Attorney
112 Montgomery St.
San Francisco

No. 314.
United States District Court
Southern Dist. of California

José Y. Limantour

vs

The United States of America

Sienega del Gabilan

Claimant's notice of intention to prosecute appeal

Filed April 30th 1886
C. E. Carr
Clk
By A. Collingwood Dep.

Charles E. Carr Esqr
Clerk of U.S. District Court for
Southern District of California
Los Angeles
California

SAN FRANCISCO
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APR
CAL.

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United States District Court
Southern District of California }

No.

José Y. Limantour
vs
The United States of America

The United States Land Commission to ascertain and settle private land claims in the State of California having rendered its decision in the above case designated on the Docket of said Commission as No. 782 against the claim and title of the said claimant to the place or land called "Sienega del Gabilan" situated in said District, Notice is hereby given that it is the intention of the said claimant to prosecute his appeal from the said decision.
April 15th 1856.

Robert Ptmson
Claimants Attorney
112 Montgomery St.
San Francisco

No. 314
United States District Court
Southern Dist of California

José Y. Limantour
vs
The United States of America

Claimants notice of intention to prosecute appeal

Sienega del Gabilan

Filed April 2nd 1856
C. Elan
Clk
By O Mengan
Dep'y

To Charles E. Carr Esq
Clerk of U.S. District Court of the
Southern District of California
Los Angeles
California

Q. C. D.

This Indenture,

Made the Fourteenth day of January in the year of Our Lord one thousand eight hundred and fifty-Seven

Between José Y. Limantour now in the city of San Francisco State of California of the first part. and Thomas O. Larkin of said City and State

of the second part, **Witnesseth,** That the said party of the firs part, for and in consideration of the sum of One Dollar lawful money of the United States of America, to him in hand paid, by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has remised, released, and quit-claimed, and by these presents do remise, release, and quit-claim unto the said party of the second part, and to his heirs and assigns forever, **All** That tract or parcel of Land known by the name of "Sienega del Gabilan" situated in and near the Mountain of that name and near the Ex Mission of San Juan in the county of Monterey State of California Bounded on the North by the Rancho formerly owned by the late Joaquin Gomez and the Rancho owned by the late Nicolas Buelton. Said tract or parcel of land containing according to the grant from the Mexican Government as hereafter mentioned "Once Sitios de Ganado Mayor" Eleven Leagues of Land. a little more or less. which was granted to José Antonio Chaves in the town of Monterey California on the twenty sixth day of October. One thousand Eight hundred & forty three. by Don Manuel Micheltorena then Governor of California, to which reference is made which tract or parcel of land. with all the rights title and interest belonging or appertaining to said grant to said Chaves

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. **And** also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said part of the first part, of, in or to the above described premises and every part and parcel thereof, with the appurtenances.

To Have and to Hold, all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, and his afsigns forever.

In Witness Whereof, the said party of the first part, has hereunto set his hand and seal the day and year first above written.

Signed, Sealed and Delivered in the presence of

Robert Simson

F. Simonton

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State of California

City and County of San Francisco } ss.

On this [illegible] day of [illegible] A. D., One Thousand Eight hundred and [illegible] before me, [illegible] a Notary Public in and for the City and County aforesaid, personally appeared [illegible] known to me to be the individual described in and who executed the foregoing Conveyance, and acknowledged that executed the same freely and voluntarily for the uses and purposes therein mentioned.

In Witness Whereof, I have hereunto set my hand and affixed my official Seal in the County aforesaid, the day and year first above written.

Notary Public.

To Have and to Hold, all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, and his afsigns forever.

In Witness Whereof, the said party of the first part, has hereunto set his hand and seal the day and year first above written.

State of California,
City and County of San Francisco, } ss. On this Seventeenth day of January A.D. 1857, before me, **Lewis W. Sloat,** a Notary Public in and for the County aforesaid, personally appeared Robert Simson — subscribing witnefs to the annexed instrument, to me known, who being by me duly sworn did depose and say, that he resided in said County, that he knew

José Y. Limantour

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the individual described in and who executed the said instrument: that he was present and saw him sign, seal and deliver the same as and for his act and ded; and said José Y. Limantour then acknowledged that he executed the same freely and voluntarily, for the uses and purposes therein mentioned, whereupon the said Robert Simson — became the subscribing witnefs thereto.

In Witness Whereof, I have hereunto set my hand and affixed my Official Seal, the day and year first above written.

L. W. Sloat
Notary Public

State of California,
County of } ss.

On this day of A. D., One Thousand Eight Hundred and Fifty before me, a Notary Public in and for said County, personally appeared

known to me to be the individual described in and who executed the foregoing Conveyance, and acknowledged that executed the same freely and voluntarily for the uses and purposes therein mentioned.

In Witness Whereof, I have hereunto set my hand and affixed my official Seal in the County aforesaid, the day and year first above written.

Notary Public.

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Limantour
to
Larkin –
"Sinega del Gabilan"

January 14th 1857

Filed Feby 27th 1857
Cpm
Clk

Rec'd for Record January 29th 1857 @ 4.30 P.M. and Recorded in Book "C" of Conveyances on page 34 and following –

Chas L. Williams
County Recorder
Monterey County

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Jany 14/57

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

José G Limantour
Appellant
vs
The United States
Appellee

No 314.
"Cienega del Gabilan"

And now on this day it having been made to appear to the Court that the appellant José G Limantour has sold and conveyed all his interest in the lands claimed in this case to Thomas O Larkin, by deeds duly executed, and on motion of Myron Norton attorney for the said Larkin, It is Ordered by the Court that the said Thomas O Larkin be and he hereby is substituted as claimant and appellant in this case, in the place and stead of the said José G Limantour, and that all subsequent proceedings in this case be conducted in the name of the said Thomas O Larkin

Ogier
N S District Judge

Feb 21/57

No 314

U. S. District Court
South District California
Jose Y Limantour
Appellant
vs
The United States
Appellee

Order of Substitution
of Parties

Filed Feb 21st 1857
Ogden
Clk

Myron Norton
Atty

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

Thomas O Larkin
Appellant
vs
The United States
Appellee

No. 314
"Laing Gavilan"

To the Hon Isaac S K Ogier district Judge of the United States for the Southern district of California

Your petitioner Thomas O Larkin a resident of the city and County of San Francisco and State of aforesaid respectfully represents to Your Honor that Jose G Limantour was claimant before the Board of United States Land Commissioners to ascertain and settle the private land claims in California, in case No. 782 before said Board, for a tract of land situate in the County of Monterey and within this district, containing eleven square leagues of land more or less, and known by the name of "Cienega del Gavilan"

That said tract of land was granted to one Jose Antonio Chavis on the 26th day of October 1843 by Manuel Micheltorena then Constitutional Governor of California, by virtue of authority in him vested

That said grantee and his assigns

have occupied the said land, and cultivated the same up to the present time —

And your petitioner further represents that the said Charis and Simantour have conveyed to your petitioner by deeds duly executed and now on file in this Court all their right and title to the said lands, and that Your petitioner is now the legal owner thereof —

And your petitioner further represents that on the hearing of said claim by the said Commissioners, the same was rejected, and declared to be invalid — That a Transcript of the proceedings of the said Commissioners and of the documentary evidence and testimony of the witnesses in said case was duly filed with the Clerk of this Court on the 23d. day of October AD 1855, and that on the 21st day of April 1856 a notice of the intention to prosecute an appeal from the decision of the said Commissioners was duly filed with the Clerk of this Court —

Your petitioner therefore prays that this Hon Court will review the decision of the said Commissioners and decide on the validity of said claim, and decree the same to be

good and valid, and for such other or further and general relief as shall seem consistent with law and equity —

Thomas O Larkin
by Myron Norton
his Atty.

Feb 21/7

No 314.

U S Dist Court
South Dist of California

Thomas C Martin
Appellant
vs
The United States
Appellee

Petition for rehearing

Filed this 21st February 1857
C Sims Clk
J H Coleman
Dep

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Curtis Morton
atty for applt

In the district Court of the United States for the Southern district of California —

José Y Limantour
Appellant
vs
The United States
Appellees

} No. 314, "Cienega del Gavilan"

And now at this day comes Thomas O Larkin by Mayron Norton his attorney, and on filing the deed of José Antonio Chavez to said Larkin and also the deed of the appellant to said Larkin of the land claimed in this case, moves the Court that he the said Thomas O Larkin be substituted as the party appellant in this case in the place and stead of the said José Y Limantour & that all subsequent proceedings in this case be conducted in his name —

Mayron Norton
Atty for Thos O Larkin

Feb 21/57

No 314.

U. S. Dist Court

South Dist of California

José G Limantour

Appellant

vs

The United States

Appellee

Motion for substitution of parties

Filed Feby 21st 1857

Ogden

Clk

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Motion to substitute
etc

Q. C. D.

Sold by J. McGLASHAN & CO., 127 Montgomery Street.

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This Indenture,

Made the twenty first day of March in the year of Our Lord one thousand eight hundred and fifty-six

Between Jose Antonio Chaves of the town of San Diego State of California now in San Francisco State aforesaid — of the first Part. and Thomas O. Larkin of said San Francisco and State aforesaid

of the second part, **Witnesseth**, That the said party of the first part, for and in consideration of the sum of Two thousand dollars ($2000) lawful money of the United States of America, to him in hand paid, by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has remised, released, and quit-claimed, and by these presents do remise, release, and quit-claim unto the said part of the second part, and to his heirs and assigns forever, **All** that tract or parcel of Land situated in the County of Monterey State of California. and known by the name of "Sierra del Gabilan" situated in the mountains of that name and near the Ex Mission of San Juan in said County Bounded on the North by the Rancho of Don Joaquin Gomez and the Rancho of Don Nicolas Buelna - both late of said County - said tract of land containing "Once Sitios de Ganado Mayor. that is Eleven Leagues of land being the same tract of Land granted to said Jose Antonio Chaves in the town of Monterey formerly the Capital of California, on the twenty Sixth day of October - one thousand Eight Hundred and forty three (1843) by Manuel Micheltorena then Governor of California, which land, and all the right title and interest the said first party may have by virtue of said grant from Micheltorena in law or equity. now or hereafter. by said grant or otherwise

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. **And** also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said part of the first part, of, in or to the above described premises and every part and parcel thereof, with the appurtenances.

To Have and to Hold, *all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, and his assigns forever.*

In Witness Whereof, *the said party of the first part, has hereunto set his hand and seal the day and year first above written.*

Signed, Sealed and Delivered in the presence of

J. Ayers

Jose A. Chaves

314 SD
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State of California,
County of San Francisco } **SS.**

On *this* 21st *day of* March *A. D., One Thousand Eight Hundred and Fifty six before me,* G. F. Ayers *a Notary Public in and for said County, personally appeared*

Jose A. Chaves personally

known to me to be the individual described in and who executed the foregoing Conveyance, and acknowledged that he *executed the same freely and voluntarily, for the uses and purposes therein mentioned.*

Rec for Record March 25 1856 @ 10 a. m. & recorded in Book B of Conveyances on Pg 419 and following. Geo. S. Williams County Recorder Monterey County

In Witness Whereof, *I have hereunto set my hand and affixed my official Seal in the County aforesaid, the day and year first above written.*

Geo. F. Ayers
Notary Public.

Mar 21/56

Tiesto. 314

Conveyance

Chaves

to

Larkin

Sienega del Gabilan

March 21st 1850

Filed Feby 21st 1857

Ellis

Mar 25 1856 @ 10 am

x
3

UNITED STATES DISTRICT COURT,
Northern District of California.

The U. S. of America
vs
José Y. Limantour

San Francisco, Jan 31st 1857

ON this day, before me, Geo. Pen. Johnston a Commissioner of the United States for the ~~Northern~~ Districts of California, duly authorized to administer oaths, &c., &c., came Manuel Castro a witness produced on behalf of the Claimant in Case No. , being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 782 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows — his evidence being interpreted by J. Edgar Grymes a sworn interpreter

PRESENT: Wm Blanding Esqr U.S. atty for the North. District of Calia on behalf of the United States, and Thomas O. Larkin Esqr on behalf of the Claimant.

QUESTIONS BY Thomas O. Larkin Esqr on behalf of Claimant.

Ques. 1. "What is your name, age, place of residence, what has been your employment, if any under the Mexican Government, and what do you know about a tract of land, known as "Lienega del Gabiteau"?"

Ans. 2. "My name is Manuel Castro, aged 35 years born in California, at present residing in San Francisco. I was employed many years in California by the Mexican Government, my last Employ Government was Prefect, which I held untill July 7th 1846. I am acquainted with a Rancho, or tract of Land called "Lienega

del Gabilan" it is situated near or adjoining the Ranchos, formerly belonging William E. P. Hartnell, Joaquin Gomez & Nicolas Buttron (all now deceased) and in the vicinity of the Mission of San Juan, in the county of Monterey. In 1843 or 1844. I was knowing to the fact of José Antonio Chavis (sometimes known as Antonio Chavis) being Owner of said Rancho, called "Sinega del Gabilan" by grant from the Mexican Government, given him, as I think supposed for his services to that Government. Said Chavis being in active government employ, and the country in a state of Revolution, he was not able to stock and take charge of his land as he wanted to.

I was well acquainted with Manuel Michelltorena, while he was Governor of California, and with Manuel Jimeno his Secretary. I know that hand writing, and remember to have seen them write frequently, to the best of my knowledge and belief - the signatures of said Manuel Michelltorena and Manuel Jimeno, in the document now before me, dated October 26" 1843, granting "Sinega del Gabilan" to said Chavis - and ~~marked~~ on file in the U.S. Surveyor Gen'l Office in this case is in their own, and proper hand writing"

Manl Castro

Sworn to and subscribed before me this 31st day of January A.D. 1857.

Geo: Pat. Johnston
U.S. Commissioner

The foregoing deposition, was read and inter=

The foregoing deposition, was read and interpreted to the Witness, in my presence, signed by him, and the Atty for the U.S. stated that it was unnecessary to re-write it. –

Geo. Ph. Johnstone
U.S. Commissioner

Jany 30/57

U. S. District Court
Southern District of Cal.a

Case No. 314

The United States
vs
José Y. Limantour

Deposition of Manuel Castro, a witness produced on behalf of the Und Claimant, –

Filed this 8th April 1857
A Sirus Clk
J. H. Coleman
Dep

UNITED STATES DISTRICT COURT,
Northern District of California.

The United States
vs
José Y. Limantour

San Francisco, Jan 31st 1857.

ON this day, before me Geo. Pen. Johnston a Commissioner of the United States for the ~~Northern~~ District of California, duly authorized to administer oaths, &c., &c., came

Francisco Arce a witness produced on behalf of the Claimant

in Case No. , being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 782 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows — his evidence being interpreted by

S. Edgar Grymes a sworn interpreter

PRESENT: Wm Blanding Esqr U.S. Atty North District of Calª on behalf of the United States and Thomas O. Larkin Esqr in behalf of the Claimant

QUESTIONS BY Thomas O. Larkin Esqr on behalf of the Claimant.—

Ques. 1. "What is your name, age, and place of residence — what office, if any, have you held in the Government of California, and at what time?"

Ans. 1. "My name is Francisco Arce, my age Thirty five years — place of residence Monterey County. I held office under the Government from 1836 to 1846 — I was Chief Clerk in the office of the Secretary of the Departmental Government of California — a portion of the time I was Secretary — ad interim. —"

Ques. 2. "State what you know respecting the Document now shown to you, ~~marked~~ and purporting to be a Grant of Land called Simega del Gabilan to one Charis dated October 26th 1843 on file in the Surveyor Gen'l office in this case and what you know of said Charis and his ownership of said land?"

Ans. 2. "The body of the handwriting was made by myself - the signatures of Manuel Micheltorena and Manuel Jimeno his Secretary, are in their own handwriting - I was well acquainted with those two persons and their handwriting, having been for some years accustomed to see them write and sign their names to official papers, as I was chief clerk under Jimeno while he was Secretary of State under Governor Micheltorena. I have been acquainted with said Charis since 1835. he wrote his name Antonio, sometimes José Antonio Charis - he was at different periods Secretary of the Alcaldes of Monterey between 1838 and 1846. I remember his obtaining this land from Government for services to Government - he was so fully occupied by those services and the revolutionary state of California that he could not take charge of the property - I know the Rancho, or Grant called "Simega del Gabilan" - it is situated in the vicinity of the Ranchos formerly belonging to William E. P. Hartnell, Joaquin Gomez - and the Rancho of Manuel Butron & his son Nicholas Butron in the County of Monterey."

Sworn to & subscribed before me this 2d day of July 1857.
Geo. Pen. Johnston U.S. Comm'r

Francisco Arce
" "

The foregoing deposition, was read and inter=

The foregoing deposition, was read and interpreted to the Witness, in my presence, and the Atty for the U.S. stated that it was unnecessary to re-write it.—

Geo: Pm: Johnstone
U.S. Commissioner

Jan 31/57

U. S. District Court
Southern District of Cal^a

Case No. 314

The United States
vs
José Y. Limantour

Deposition of Francisco Arce, a witness produced on behalf of the Claimant.-

Filed this 8th April 1857
Lewis Clk
J. H. Coleman
Dep

314 SD

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United States of America, }
Northern District of California, } ss.

I, John A Monroe Clerk of the District Court of the United States of America for the Northern District of California, Do Hereby Certify that I am well acquainted with the handwriting of of J. Edgar Grymes whose name is subscribed to the annexed ~~to the annexed~~ deposition and that the signature to the same is in his proper handwriting. And I do further Certify, that he was, at the time of signing the same, ~~that he was~~ and is a Special commissioner appointed the the United States district Court to take testimony in land cases —

In Testimony Whereof, I have hereunto subscribed my name, and affixed the seal of the said District Court, this day of in the year of our Lord one thousand eight hundred and fifty and of the Independence of these United States the

Jno A Monroe

Clerk.

Dep. Clerk.

In the District Court of the United States
Southern District, State of California.

Thos O Larkin, Appellant	L.C. No
vs	Fee
The United States, Appellees	In L.C. No 314.

It is stipulated and agreed between the Attorneys for the Appellant and the Attorney of the Appellees in the above entitled cause that the said Appellant may proceed to take testimony in said cause before proper authority in the City of San Francisco Northern District, State of California, at any time, by serving notice upon said U.S. District Attorney for said Northern District of the time and place of taking such depositions, together with the names of the witnesses, at least two days before taking the same. And that such depositions when taken may be used on the trial of the cause aforesaid. Oct 8th A.D. 1857.

Myron Norton
atty for Appl
C E Thorn
Acting U.S Dist Atty

In U.S. District Court
Southern District

Thos O. Larkin
Ali
The United States

Stipulation

Deposition of Juan R. Gonzales may be taken this day 15th Dec. ~~14th~~ 1857

P. Della Torre
U. S. Atty.

UNITED STATES DISTRICT COURT,
Northern District of California.

The United States
vs
Thomas O. Larkin

San Francisco, December 15. 1857

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ON this day, before Hazard Aymé a Special Commissioner, appointed in the land Court of the Northern District of California, duly authorized to administer oaths, &c., &c., came José R. Gonzales a witness produced on behalf of the Claimants in Case No. , being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows — his evidence being interpreted by a sworn interpreter

PRESENT: Isaac Hartman Esq for Claimant and P. Della Torre Esq for the U. S.

QUESTION BY Claimant's Counsel

Question What is your ~~name~~, age and place of residence and what has been your employ, if any, under the Mexican Government in California

Answer My name is José Rafael Gonzales I was born in Mexico, aged 68, have lived in California over 24 years most of the time in Monterey and Santa Clara Counties. I was in the Civil employ of the Mexican Government several years until the 1846 in the Custom of Monterey many years

Question Were you acquainted with Manuel

Micheltorena during his administration as Governor of California and his Secretary Manuel Jimeno, did you ever see them write their names, do you know their hand writing, if yea, look on the document now before you and marked 782 in red Ink purporting to be a Grant of Eleven Leagues of Land called "Cienega del Gabilan" to Jose A Chavis by Manuel Micheltorena in October 1843, and say whether the signatures thereon are in the proper hand writing of Manuel Micheltorena and Manuel Jimeno?

Answer I was well acquainted with Manuel Micheltorena. I was a Government officer in California all the time he was Governor of the Country. I was intimately acquainted with Manuel Jimeno while he was Secretary of Micheltorena; have often seen both of them write and sign their names; their signatures to the document before me marked 782 in red ink being a grant of Eleven Leagues of Land to Jose A. Chavis, to the best of my knowledge and believe are in their own proper hand writing.

Question Are you acquainted with this tract of land called "Cienega del Gabilan", its location, extent and the surrounding country, if yea, describe it;

Answer I am well acquainted with the tract called "Cienega del Gabilan", its location and extent as generally known to the Rancheros in that vicinity, the adjoining Ranchos and surrounding

ing country. The la

—ing country. The land, a great part of which are hills and mountains, is in the County of Monterey, between the plains on the Eastern side of the Salinas River and the Arroyo of San Benito; the Northern part is near the Ranchos known as "La Natividad" and "Los Vergeles", granted many years since by the Mexican Government to José J Gomez and Señor Butron The tract extends Southerly towards the lands of the Ex Mission of "La Solidad" and the Arroyo San Lorenzo. On the Southern part there is a place called "Canada de Chualar. Between the plains of the Salinas River and the River San Benito, Los Vergeles and la Natividad and the lands of the Solidad Mission there are over twenty leagues of Land.

Question Look on the Map or plan now before you marked Exhibit J E Y purporting to be a Map of the "Sienega del Gabilan" and surrounding Country and say if the land you have described is delineated thereon.

Answer I have looked on it. I am well acquainted with the several Ranchos as there laid down, the mountains and hills of the "Sienega del Gabilan and surrounding country, having many times been there, and believe the

Map is a fair sketch of the places named. I do not know that the Ranchos on the Salinas River are each laid down in their proper location, they are more or less so - the general face of the Map is correct.

José Rafael Gonzalez
his ✗ mark

Sworn to & subscribed before me
this 15th day of December A.D. 1857
Hagan Lyons
Special Commissioner

John F. Williams being duly sworn says
That he is a deputy in the Surveyor General's office.

The document marked 782 red ink and to which the foregoing witness has this day testified was brought by me from the Archives of the Surveyor General's office where it is deposited and produced here before the Commissioner purports to be an original title on deposite in said office

John F. Williams

Sworn to & subscribed
before me this 15th day
of December A.D. 1857
Hagan Lyons
Special Commissioner

Dec 1857

No. 314 SD
782 Bd

This deposition opened this day at request of J Hartman atty of appellee Dec. 31st 1857
C. Sims clk
J. H. Coleman
Dep

U. S. Dist Court
S. Dist of Cal

Deposition of J R Gorgely

Filed this 26th Dec. 1857
C Sims clk
J H Coleman
Dep

314 SD
PAGE 56

Filed this 26th Decr 1857. Columbus Sims Clk
By [illegible] Deputy

Petition for Deposition of J. R. Gonzales

No. 314

314 SD

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Columbus Sims Esqr
Clerk of the District Court for
the Southern District of California

Los Angeles

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

Jose Ry. Limantour
Appellant
vs
The United States
Appellee

Case No 314
"Cienega del Sanitas"
Land No 782.

To the United States District Attorney
For the District aforesaid.

Sir!

Take notice that on the 4th day of January A.D. 1858, at 11 o'clock A.M. of said day or as soon thereafter as the same can be heard, the claimant and appellant will submit said cause to the aforesaid Court for decision. Los Angeles Dec 20. 1857

Shaw & Hartman
Attys for Appellant.

Dec 30/57

No 314

In District Court U.S.
Southern District

Jose Y. Limantour
Ats
The United States

Notice of Trial

Filed this 30th Dec.
1857 C Sims Clk
J. H. Coleman
Dep

314 SD
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Gentlemen & Gentlemen
for Appellant

Jos. B. Lemantour. Appellant | No. 314.
Thomas D. Larkin. Sub.
vs. | Bras. No. 782.
United States. Appelle

In the District Court of the U States for the Southern Dist of Calif.

The answer of P. Ord Atty of the United States for the Southern District of Calif. ~~for & to the~~ for & on behalf of the United States, to the petition for review of said Appellant. ~~does generally~~ says that said Respondent denies generally the validity of the alleged title of claimant; and prays the Court to affirm the decision of the Board of Land Commissioners, and decree the said title to be invalid. With Costs & general relief.

P. Ord
Atty of U.S.
S. Dist. Calif.

1/12/58

No. 314,

José Y. Lemantour
Thos. O. Larkin. Sub.

vs.

The United States,

Motion of U.S. to petition for Review.

Filed this 13th January 1858
Cox Sims Clk
J. S. Coleman
Dep

314 SD
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Larkin
vs
Estate

I Heatman being duly sworn says that my name is Peter Heatman age 39 years January. Resident City of San Francisco, profession, Atty and Counsellor at Law

Quest 1st

Have you examined and are you acquainted with the papers on file in this case against the original grant to Jose Cat. Chaiss and if so, state whether or not the copy of the grant marked B pg 107 contained in the manuscript is a true copy of the original grant and if not state particularly how you know it?

Ans. I have examined in the office of the Surveyor General of the State and the City of San Francisco, the papers in this case, transferred from the late Board of State Land Commissioners to the Office of said Surveyor General, and now on file in said Surveyor's Office and find among said papers an habilitated paper which purports

Calendar of the ud

Plaintiff 3
R Somerville Dem

Deft 3
R B Hill Jr & Dem

to be the original grant in this
Case signed by Manuel Mich
eltorena as Governor, by Manuel
Pino his Secretary, I am
not personally acquainted with
the signatures of the said Mich
eltorena and Pino his Secretary
said grant by the Endorsement
thereon purports to have been
filed before the U States Land
Commission - this grant was
brought by one of the Clerks of
the Said Surveyor General at
my instance under a Subpoena
"duces tecum" before J Edgar
Grimes on the day on which the
Deposition of Rafael Gonzales
was taken in this case - said
Document is the same con-
cerning which, the said Gonzales
testifies to the genuineness of the
signatures thereto of said
Micheltorena & Pino, I believe
the Copy contained in the Manu
script to be a true Copy of said
document on file in the said
Surveyor Generals' Office

Quest Have you or not Examined the Original grant and do the Copy contained in the transcript is a certain whether the Copy was a true Copy of the Original grant and if so state whether it is or not?

Ans I Examined said Original some time in the month of Dec 1857 I did not Examine the Copy in the Transcript until ~~two~~ a few days past, But from the best of my recollection, I believe the Copy in the Transcript was a Correct Copy of said Original

Isaac Hartman

Sworn to & before me this 4th day of July 1857

C Sims
Clk

Gaston
vs
Wells

Deposition of
I Hartman

Filed July 4th 1858
C Sims
Clk

No 314

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

Thomas O. Larkin
Appellant
vs
The United States
Appellee

Case No 314
"Cienega del Cahuilla"
Trans No. 782

314 SD
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Decree.

This cause came 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 March 3, 1851, on a transcript of the decision and proceedings of said board, and the papers and evidence upon which said decision was made, and the other evidence adduced by the appellant before this Court, and it appearing to the Court that Thomas O. Larkin had been heretofore substituted in this Court by its order as claimant and appellant instead of the said Juan Ig. Sinsentano, and counsel for the respective parties having been heard,

It is ordered adjudged and decreed that the decision of said Board of Land Commissioners be and the same

is hereby reversed, and that the claim of the senior Appellant Thomas O. Larkin is good and valid and the same is hereby confirmed to him as follows, to wit, eleven leagues of land and no more situate in the County of Monterey State of California, and bounded as follows, on the north by the Ranchos of Los Vergeles and Santa Ana, and between the Ranchos of San Justo, de Castro, and the Arroyo of San Benito on the east, and the Ranchos of Sausal, Alisal and Spence on the west, and the cañada de Chualar on the south, according to the calls of the grant in this case and as is more fully described in the map in this case attached to the deposition of Jose Rafael Gonzalez, to which reference is hereby made, provided that the quantity of land hereby confirmed within the boundaries aforesaid is not more than eleven square leagues of land, and provided also that if the quantity of land within the boundaries is less than eleven square leagues of land, that this confirmation is hereby made to such less quantity of land and no more.

Given under my hand in open Court, this 5th day of February A.D. 1858.

Isaac S K Ogier
U S Dist Judge
pro tem S Dist of Cal

Feb 5/58

No 314

In District Court
Southern District

Thos O. Larkin

vs

The United States

Decree

Filed this 5th February 1858
Lewis Cass Clk
By J H Coleman
Dy

314 SD
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Recorded on Page 261

Mazyck Porter & Atty
Stevens & Porter Proctors of Complt

José Y. Limantour et al, Appellants,
v.
The United States,
Appellee.

No. 314.

J. Ord Attorney of the United States for the Southern District of California being duly sworn, deposes and says. That he has been informed, and believes that lately evidence has been taken in San Francisco, in the case of José Y. Limantour vs. The United States, claiming a large part of the said City, now pending in the District Court of the United States, for the Southern Dist. of Cal.a, on appeal from the late Board of U.S. Land Commrs., establishing the fact that there was but one seal for the Maritime Custom House of Monterey Cal.a, which was invariably used in the habilitation of all sealed paper, especially for the grants 1842, 1843, & 1844, and that the seals, purporting to be the seals of the said Custom House of Monterey, appearing upon all the alleged original grants to said José Y. Limantour, and the expedientes of the same, including also one presented in the name of said Limantour, to the U.S. Land Commrs., purporting to be a grant to one Antonio Chavis (case No. 314, in the Docket of this Court) are essentially different from the seals appearing upon the genuine habilitated paper of said Custom House

for the said years of 1842, 1843 & 1844.
That the persons who will prove
the above fact are Fleming,
Hopkins, Davison,
Tennant, residents of San Francisco,
and Edward L. Williams of Monterey,
Cal^a. And further that one or more
of the said ~~persons~~ persons will prove,
upon comparing the printed heading
of said stamped paper, upon which
the said pretended original grants
to said José Y. Lemantour, and to
said Antonio Chavis, upon which
the claim in this case is founded, are
written, with the printed heading of the
stamped paper for the said year of
1843, contained in the archives of the
former government of Mexico, and
now in the possession of the United States
Surveyor Genl for Cal^a, that they
differ essentially, both in form and in
type. And further. That Augustin
Tornan, now in San Francisco, will
prove that all the pretended grants
of land, made by Gov. Micheltorena to
said José Y. Lemantour, during the
years 1842, 1843, & 1844, and also the
pretended grant in this case, to said
Antonio Chavis, were made after the
change of government, and after the
year 1847, and that they are fraudulent
affiant further says that the facts
herein stated come to his knowledge

too late to be had, with all due diligence
in evidence at the trial of this cause.

P. C. Ord
Atty.

Filed this 7th day of July 1856 in open Court

C. Lines
Clk

Jan 10/58

No 314

G G Lemaster
appelt

vs

The States

Motion of Appellant
for Mandate

Filed Feby 10th 1858
Chas
Clk

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

No. 314.

Jose. Y. Limantour
Appellants
Vs.
The United States
Appellees

To the Clerk of said Court and the United States District Attorney for said District.

Notice is hereby given that the argument of the motion for new trial in said cause will be brought on for hearing before said Court on the 10th. inst at 11. o'clock A. M. of said day or as soon thereafter as the same can be heard. June 2. 1858.

Lewis Hartman
Attorney for Appellants

June 2/58

No. 314.

In U. S. District Court
for Southern District California

José Y. Limantour
Appellant

Vs.

The United States
Appellees

Filed this 3d June 1858
Calvin Clk
J. W. Coleman
Dep

314 SD
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Isaac Hartman
Atty for Appellant

United States District Court, for the Southern District of California

Thomas O. Larkin
Appellant
ads
The United States
Appellee

No 314

The President of the United States of America

To J. W. Mandeville Surveyor General of the United States for the State of California. Greeting

We Command You, that all and singular business and excuses being laid aside, You appear and attend before The Honorable Isaac S. K. Ogier, Judge of the United States District Court for the Southern District of California at a Term of said Court to be held at the Court Rooms in the City of Los Angeles on the 7th day of April A.D. 1861. at 11. O. Clock AM of said day, and that you bring with you the Original Grant in the above mentioned Cause, now on file in your office, - then and there to testify in the said Cause, now pending in said Court and for a failure to attend you will be deemed guilty of a Contempt of Court, and liable to pay all loss and damage sustained thereby to the party aggrieved

Witness, the Hon. Isaac S. K. Ogier
Judge of the United States District Court
for the Southern District of California
this the twenty first day of March A.D.
1861,
Attest, my hand and the seal of said
Court the day and year last above written

Geo. L. Mix Clk
John O. Wheeler Deputy

Personally served the within upon the within named J. W. Mandeville by delivering to him a true copy of the within and reading the same at his office in San Francisco Cal April 2nd A.D. 1861

James C. Pennie
U S Marshal
By A W Buchanan Dep'ty

U. S. District Court
North District of Cal

Jos C Pennie
vs
Mexican Sales

Affd. Accounting

Filed this 6th day of April 1861
J. G. Moore
Clerk

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No 314

Thomas O. Larkin } Appellant
vs } No 314
The United States } Appellee

B. F. Ashley being duly sworn says that on the 18th day of Feby 1858. I, did then U.S. District attorney for the Southern District of California file his affidavit on behalf of the U.S. for new trial in the above entitled Cause setting out facts showing the fraudulency of the original grant upon which the Court predicated its decree of Confirmation. and among other witnesses to establish the fraud named one Hopkins. meaning R.C. Hopkins Keeper of the archives in the Surveyor General office for the U.S. in San Francisco and Edward L. Williams then of Monterey & now a resident of Santa Cruz County. The affidavit of said Ord is hereby made a part of this affidavit.

Affiant further says that on the 27th day of March 1861 a Subpoena duces-tecum was duly issued by the Clerk of the U.S. District Court

for the Southern District of California at a term to be held in Los Angeles on the 7th day of April 1861. Ex J. W. Wandrill then U.S. Surveyor General having the Mexican archives in his office, which Subpoena Commanded him to bring the original grant in this case & to testify &c.

That said Subpoena bears a return made by Samuel C. Pearce U.S. Marshall by A.W. Buchanan Deputy, said return dated April 2nd 1861, showing a service duly made thereon.

Affiant further says that on the 20th day of July 1862 another Subpoena duces-tecum was duly issued by the Clerk of this Court, directed to E. F. Beale U.S. Surveyor General also on the part of the U.S. Commanding him to bring with him the original grant in this case, made returnable August 4th 1862, which bears a return duly served by H.D. Barrows U.S. Marshall by Jacob R. Leese.

Affiant further says that about the 3rd day of May 1863, he called upon said R.C. Hopkins in Company with B.C. Whiting acting U.S. Dist

attorney for the Southern District of California, for the purpose of obtaining the affidavit of said R.E. Hopkins Now Keeper of the Mexican Archives at San Francisco, in connection with said original Grant in this case to establish the fraudulency thereof. When said Hopkins informed affiant & said Whiting Dist Atty that said original Grant was not at that time in the said Archives, but that it had been delivered to said A.W. Buchanan deceased Marshall upon the said Subpoena duces-tecum dated 21st day of March 1861, as appeared from a receipt on a the back of a copy of said Subpoena last named. Whereon said A.W. Buchanan was to deliver said original Grant to Judge Ogier then District Judge for said Southern District, whereupon the affidavit of said Hopkins could not be procured to be used on the hearing of the New trial in this cause.

And affiant is informed by said Whiting & believes the fact to be that said Whiting, as his earliest opportunity made or caused to be made due &

diligent search to be made in the office of the Clerk of said Southern District Court, for said original grant and that the same could not be found & has not been found there or among any of the papers when it would or should be found, and finds that said Whitney addressed a letter to Mrs Ogier widow of the late Judge Ogier deceased to ascertain if said original grant was among the private papers of said Ogier, but no answer has been received from Mrs Ogier, though sufficient time has elapsed for an answer.

Affiant further says that he has personally called on Edward L. Williams whose name is given in the affidavit of said Ord, and from said Williams this affiant learned the following facts: that before the trial of the Sonora Cases in the Northern Dist of California, referred to in Ords affidavit said Williams was employed by Stanton having charge of defence to said Claims, to assist in the preparation of said Cases for trial, and that it was said Williams who discovered

and the forgery of the seals on said

and the forgery of the seals on said grants, & in this capacity became conversant with all the facts & proofs concerning these fraudulent grants and who also gave the important testimony upon which those grants were defeated, and during his connection with the U.S. Government in these respects, also became familiar with the grant in this case from examining the papers.

Affdt - further says that said Williams has in his possession a book containing a photograph of the original grants in the Sonnentine cases and also of the original grant in this case, said Williams also has in his possessions four bound volumes containing the papers & evidence used on the trial of said Sonnentine cases, and said Williams will give such evidence or is able to make an affidavit in this case which will fully establish the fraudulency and forgery of the original grant. And he will attend this Court ~~for the purpose~~ upon the order thereof with his books

the grand as above descriptive.

And affiant further says that he has been informed & believes & states the fact to be that said A. W. Buchanan deputy who received said Grant from the said Archives, is now residing in Portland Oregon, wherefore it is impossible to procure said original Grant to be used on the hearing of the New trial in this cause to show the fraud & forgery thereof. And asks ~~for~~ further time to make further search, therefore & that said Williams be required to give evidence in the matter

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Subscribed and sworn to before me this 9th day of June 1883

John O Wheeler
Clerk of Dist Ct Dist Calif

B. F. Ashley

June 9/63

No (314)

Thos O. Larkin

vs

United States

" " "

affidavit for
Continuance

Filed June 9. 1863
John W. Geyer

Thos O. Sentein } Appellant

Trm. Term 1863 vs } No 314

The United States } Appellee

U.S. Dist Court for Southern Dist Cal

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B. F. Ashley

being duly sworn on Oath, says that Thos O. Sentein the appellant in the above entitled action departed this life in the year of 1858 in the City of San Francisco California as this affiant is informed and believes & therefore states the fact. and that he left his last will and testament devising the land known by the name of Singa de Gabeland the title of which is involved in this action, to his wife and Son Frederick H. Sentein who were by him appointed executrix & executor of said will.

Wherefore the Court is now moved to revive this cause in the name of said Executrix & Executor of said Thomas O. Sentein.

Subscribed & sworn to } B. F. Ashley
before me April 10th 1863

John O Wheeler
Clerk of Dist Court California

June 10/63

U. S. Dist Court

Thos O. Lenkin
appellee

vs

The United States
appellee

Opinions

Filed June 10, 1863
John D Wheeler
Clk

7

SELLO PRIMERO OCHO PESOS.

Habilitado provisionalmente por la Adtura marítima del puerto de Monterey, en el Departamento de las Californias, para el año de mil ochocientos cuarenta y tres.

Michaltorena. Manuel Castañares.

ADTURA MARIT.ª DE MONT.

El Ciudadano Manuel Michaltorena General de Brigada del Ejercito Mejicano Ayudante Gral. de la Plaza Mayor del mismo Gobernador y Comand.te Gral. del Departam.to de las Californias.

Por cuanto D.n Antonio Chacon mejicano por nacim.to ha pretendido para su beneficio personal, el parage conocido con el nombre de Ciénega del Gabilan, situado en la Sierra del mismo nombre en la comprehension de este partido y colindante por el Norte con el Rancho de D.n Joaquin Gomez y el de D.n Nicolas Butron conforme espresa la solicitud y el Diseño: practicadas previam.te las diligencias y averiguaciones convenientes segun lo dispuesto por leyes y reglamentos de la materia usando de las amplias facultades con que me hallo imbestido a nombre de la Nacion Mejicana, he venido en concederle en propiedad el

Mencionado parage bajo las condiciones siguientes.

1ª — Podrá deslindarlo sin perjuicio de otros haciendas caminos y servidumbres y disfrutarlo libre y exclusivamente destinandolo al uso ó cultivo que mas le acomode.

2ª — El terreno de que se hace donacion es de once sitios de ganado mayor. El Juez que diere la posesion lo hará medir conforme á ordenanza quedando el sobrante que resulte á la Nacion para los usos convenientes.

En consecuencia mando que teniendose por firme y valedera el presente Titulo se tome razon de el en el Libro que corresponde y se entregue al interesado para su resguardo y demas fines.

Dado en Mon-

tiva Capital del Departam.to á
Veinte y Seis de Obtre. de mil
ochocientos cuarenta y tres.

Man.l Michelena

Man.l Jimeno
Srio.

Queda tomada razon de esta
Concesion en el Libro respectivo.

Jimeno

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

I, **E. F. BEALE,** *Surveyor General of the United States for the State of California, and as such, having in my office, and in my charge and custody, the papers of the late Board of Commissioners to ascertain and settle the private land claims in California; by virtue of the power vested in me by law,* **Do Hereby Certify,** *that the* three *preceding, and hereunto annexed pages, numbered from one to* three *inclusive, exhibit a true, full, and correct* ~~copy, of~~ Photographic Copy of an original Spanish Document on file in my office, purporting to be a grant from Manuel Micheltorena, to Antonio Chavis for the Rancho named "Sunga del Gabilan"

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* 6th *day of* Sept. *1863.*

[redacted]

U. S. Surveyor General, for California.

I hereby certify, that the within photographic copy, was taken under my superintendence, and that the same was faithfully executed, and presents an exact representation of the Original -

R. C. Hopkins
Keeper of Spanish Archives
in Office of U. S. Surv.
General for California

San Francisco
Sept. 6th 1863

N. C. No 1. [redacted]

SELLO PRIMERO OCHO PESOS.

Habilitado provisionalmente por la Aduana marítima del puerto de Monterey, en el Departamento de las Californias, para el año de mil ochocientos cuarenta y tres.

Micheltorena. Manuel Castañares.

E. L. W.

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Manuel Micheltorena General de Brigada del Ejercito Mejicano, Ayudante General de la Plana Mayor del mismo, Gobernador Comandante General é Inspector del Departamento de las Californias.

Por cuanto el Ciudadano Antonio Maria Pico, ha pretendido para su beneficio personal y el de su familia el parage conocido con el nombre de Pescadero, por la parte de abajo, colindante con el Rancho de Dn Juan Maes, con el de Dn José Noriega, con Buenos Ayres al paso del Pescadero y el Rio: practicadas previamente las diligencias y averiguaciones consernientes segun lo dispuesto por leyes y reglamentos: usando de las facultades que me son conferidas á nombre de la Nacion Mejicana, he tenido en conceder le el terreno mencionado declarandole la pro-

I hereby certify, that the foregoing photographic copy truly represents the seal of the Aduana de Monterey (Custom House) as found in the Archives under my charge

San Francisco
Sept. 6th 1863

R. C. Hopkins
Keeper of Spanish
Archives in Office
of U. S. Surv. Genl
for California —

State of California
County of Santa Cruz } S.S.

Saw. L. Williams being duly sworn says that the photographic copy or fac simile of the grant by the name of Sienega de Gabilan in Monterey County which is certified to by C. F. Beals U. S. Surveyor General for California on the 6th day of September 1863 and attached to this affidavit is a true full and correct photographic copy or fac simile of said original grant called Sienega de Gabilan situated in Monterey County California and that said original grant is the same which was filed or presented before the U.S. Board of Land Commissioners for California for confirmation by Jose G. Limantour Vs. The United States.

And this affiant further says that the Photographic copy or fac simile of the seal on the left margin of the paper marked "J. W. No1" on upper left hand corner and affiants initials S.L.W. marked over said seal with a certificate attached of R. C. Hopkins Keeper of Spanish Archives &c dated San Francisco Sept. 6. 1863, truly represents the genuine seal of the Custom House of Monterey and is such as is found used by the Mexican Government on all genuine grants and other genuine documents made by that Government.

Affiant further saying refers to

his affidavit made in reference to said seal on the said original grant in the case of Jesse D. Carr substituted for Thos. O. Larkin vs. The United States filed in the U. S. District Court for the Southern District of California for his means of knowledge concerning said grant and seal, and further he says not.

Sworn and subscribed to before me this 24th day of October 1863.

D. J. Harlan
Clerk of District Court of Santa Cruz County.
By James O. Manzer
Deputy

Edw. L. Williams

U. S. Patent
Filed Oct 24 1863
Jesse D. Carr vs. Thos. O. Larkin's agent
Testimony of Edw. L. Williams
Recd Oct 24 1863
Recorded
Etc

Pl. Copy of Grant
Aff. of Edw. Williams
Recd Oct 24 1863
Recorded
Etc

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Jesse D. Carr } Appellant } U. S. Dist
vs } Court for
The United States } Appellee } Southern Dist

Edward L. Williams being duly sworn on oath says that the annexed traced Spanish document consisting of three pages, is a traced copy of a fac simile photographic copy of an original document which he has seen and examined many times in the United States Surveyor Generals Office for the State of California, in San Francisco in the year 1858. Which original document affiant deposes and says is the same as he verily believes upon which is based the claim of Thomas O. Larkin the vendee of Jose Y. Sementes for the Rancho Senaca de Gabelan in Monterey County & which was filed by said Sementes for confirmation before the Board of Land Commission in San Francisco under the act of Congress of the 3rd of March 1851. on the 2d day of March 1853

Edw L. Williams

Sworn to & subscribed before me this 29th June A.D. 1863

John O Whaley
Clerk of the U.S. Dist Court

Exhibit "A".

SELLO PRIMERO OCHO PESOS.

Habilitado provisionalmente por la Aduana maritima del puerto de Monterey, en el Departamento de las Californias, para el año de mil ochocientos cuarenta y tres.

Micheltorena. Manuel Castañares.

ADA. MARIT.A DE MONT.Y

El Ciudadano Manuel Micheltorena General de Brigada del Ejercito Mejicano Ayudante Gral. dela Plana Mayor del misma Gobierno y Comand.te Gral. del Departam.to de las Californias

Por cuanto D.n Antonio Chaves Mejicano por nacim.to ha pretendido para su beneficio personal, el parage conocido con el nombre de Sienega del Gabilan, situado en la Sierra del misma nombre en la comprehencion de este partido y colindante por el Norte con el Rancho de D.n Joaquin Gomez y el de D.n Nicolas Butron conforme espresa la solicitud y el Dicaño: practicadas previam.te las diligencias y averiguaciones consecuientes segun la dispuesto por leyes y reglamentos de la materia usando de las amplias facultades con que me hallo investido á nombre dela Nacion Mejicana, he venido en concederle en propiedad el

mencionado parage bajo las condiciones siguientes. ——

1ª Podrá cercarlo sin perjuicio de las trabesias caminos y servidumbres y disfrutarlo libre y esclusivamente destinandolo al uso ó cultivo que mas le acomode ——

2ª = El Terreno de que se hace donacion es de once sitios de ganado mayor. El Juez que diere la posesion lo hará medir conforme á ordenanza quedando el sobrante que resulte á la Nacion para los usos combenientes

En consecuencia mando que teniendose por firme y valedera el presente Titulo se tome razon de el en el Libro que corresponda y se entregue al interesado para su resguardo y demas fines. —

Dado en Mon=

tero y Capital del Departamto. el
Veinte y Seis de Octre. de mil
ochocientos cuarenta y tres.

Manl. Michelena

Manl. Jimeno.
Srio

Queda tomada razon de esta
consecion en el Libro respectivo

Jimeno

Jesse D. Carr, Appellant
v.s.
The United States, appellee

U.S. Dist Court
for Southern Dist

314 SD
PAGE 100

B. F. Ashley
being duly sworn, on oath says: That in 1861 as appears by a Subpoena duces tecum on file in the Clerks Office, a return is made showing service thereof upon the U.S. Surveyor General for California, which Subpoena requires said Surveyor General to return to this Court the Original grant for the Sinaga de Sabelan in this Case, then entitled in the Name of Thomas O. Larkin appellant v.s. the United States appellee, And Affiant further says that within two months last passed he made personal enquiry of R.C. Hopkins Keeper of the Mexican archives in the U.S. Surveyor Generals Office for California in San Francisco for said Original Grant and he was informed by said Hopkins that said Original Grant was not at that time in said Archives but that in his opinion it had been sent to Judge Ogier in 1861, who was then the acting judge of the above entitled Court, said Hopkins then did not within the two

Months last passed, exhibited to affiant a Copy of said Subpoena duces tecum from among the papers containing original Spanish documents emanating from the Mexican authorities concerning land titles in California, on which Copy was a receipt written for said original Grant and signed by A. W. Buchanan Deputy Marshall, said receipt purporting to ~~be~~ show that said Buchanan had received from said U.S. Surveyor General, said original Grant for the purpose of delivering the same to said Judge Ogier. Said receipt was dated on the day of 1861.

This affiant further says, that on the day of 1863, an original grant was exhibited, before the above entitled Court, which was found within the Clerks office of this Court, and supposed to be the original grant upon which was based the Claim to the Rancho in this case, And affiant says that from comparing the Contents of the traced Copy attached to the Deposition of Edward L. Williams, marked Exhibit "W" with the contents of the Spanish Copy contained in the record in this Case No 314, he believes therefrom states the facts to be that from

having received said original Grant so exhibited to this Court, that it is the original Grant upon which is based the Claim to the said Rancho ~~which original Grant affiant is informed by the Clerk of this Court, is now in his possession but it~~ is not filed as a paper in this case.

Affiant further says that the affidavit filed in this case of newly discovered testimony on the pending motion for new trial alleges that said original grant is a forged & fraudulent grant which is shown by the seal thereon and it is therefore necessary and important to the defence on the part of the Government to defeat said Claim to said Grant, that said original Grant be subjected to the inspection of this Court as part of the facts necessary to bring before the Court the newly discovered testimony to prove the forgery & fraudulency of said original Grant, and also that said original Grant be subjected to the inspection of witnesses for the purpose of proving the forgery & fraudulency of said Grant.

Wherefore Affiant prays that said original Grant so in the possession

of said Clerk, be now exhibited by him to this Court and such witnesses now or hereafter as may be called upon to ~~testify respe~~ make affidavit to be filed herein on the pending Motion for New trial as will be relevant and proper to prove the forgery or fraudulency of said original Instrument.

And that such orders be made in the premises as may be necessary & proper to procure the necessary affidavits which of right ought to be made & filed to be read on the hearing of the Motion for New trial and for other deserved days. Not

B. F. Anthony

Sworn to & subscribed before me this 29th day June 1863

John O Wheeler

Clk of Dist Ct

June 29/63

U.S. Dist Court

No 314

Jesse D. Carr
appellant

vs

The United States
appellee

appeal

Filed June 29/63
John D Wheeler
Clk

1

Jesse D. Carr & Appellant } U.S. Dist
vs. } Court So. Dist.
The United States & Appellee } Dist. No 314

Edward L. Williams
being duly sworn on oath says. That
in the year 1858, he was employed
by the Hon Edwin M. Stanton, then acting
assistant Attorney general of the United
States for California, during his
prosecution of the various trials of cases
in the United States vs. Jose Y. Limantour
then pending & tried in the United
States District Court for the Northern
District, in San Francisco California.
That affiant during such employ-
-ment ~~Consisted in~~ carefully investigated
~~of~~ the Mexican Archives in the Recorders
Office in Monterey County California
the Office of the Secretary of State of
California at Sacramento and the
U.S. Surveyor Generals Office in
San Francisco, which investigations
were made by him on the part of the
Government of the U.S. as an expert
to obtain traces of fraud and

forgery sufficient to overthrow the claims to various lands of the said Symmentons and his Compatriots alledged to be forged & fraudulent. During the investigations thus made affiants attention was called to the original Grant filed by the Claimant, Sixto Y. Symmentons & presented by him to the Board of Land Commissioners authorized by the Act of Congress of the 3rd of March A.D. 1851 to settle private Land Claims in California on the 2nd day of March A.D. 1853 and particularly ~~to the~~ called to the impression of the seal on said grant, and that of those to which Symmentons claimed other lands. Affiant further says that he made a critical examination of the impressions of the seals on all the land grants numbering over five hundred, then ~~[illegible]~~ on file in said U.S. Surveyor Generals Office, and that he called from them some eight or ten grants among them one for eleven Spanish leagues of

land called "Cienaga de Gabilen"
alledged to have been granted to one
Chaves and conveyed or assigned
~~to~~ Jos. Y. Symanton by said Chaves,
a true copy by affiant made
of a fac simile photograph of said
original grant, so presented for
confirmation to said Board. is marked
exhibit "A" and attached to the affi-
-dedavit this day made by affiant, which
-ch affidavit & true copy is hereto
attached & made part of this affidavit.
affiant further says that said
eight or ten grants were by him
selected from the balance of said
grants because of their being diffe
-rant from the others in water
mark on paper, impressions of
type, and impressions of the Custom
house seal thereon, sufficent to
indicate forgeries, which differen
-ces are as follows. 1st The water
mark of the said eight or ten grants
is differant from all others as he
verally believes. 2nd The impression
of the type composing the ~~bp~~ most

printed lines is smaller, the impression of the type is not shown on the back of the last page of the sheet of paper composing the Grants, while upon the genuine Grants of the year 1843 such impression is visible on all the pages of each sheet, indicating that ~~the~~ in the genuine Grants the paper must have been folded when placed under the press.

In the impressions of the seals the berry of the Cactus on the right hand side and lower portion of the impression nearly touches the circle in which it is contained. The letters composing the legend are smaller, the tail of the serpent at its end is coiled close forming a knot. The right wing of the eagle is wider and the top of it higher. The left wing is not so much curved on the top and the side nearest to its body. The lines are straighter. The wings of the eagle are more extended and do not droop so much. The top of the Cactus on which the eagle seats is much straighter, the two tendrils

of the Cactus at the extreme bottom are smaller. The above description of impressions of the seal apply to the seals on the eight or ten grants in comparison with the genuine ~~seal~~ impression of the seals found on all the other grants, purporting to be the Custom House seal of the Mexican Government used in California in authenticating Mexican land Grants.

The before mentioned grant of "Cinigo de Gabilan", is one of the grants bearing the impression of seal as above described and indeed among the eight or ten above mentioned.

Affiant further says that the Name "Manuel Jimeno," and "Jimeno" wherever ~~they occur~~, the same occur upon said eight or ten grants was not written by the same person, that wrote such Name or Names upon any of the balance of said grants.

Affiant further says that ~~as~~ he is an expert as to writings and that such Name or Names could not

have been written by one and the same person upon all of the grants in California, and ~~such~~ have such differance in writing that, and in the judgment of affi=ant the signatures ~~of the~~ appearing on said original grant in this case are not the genuine signatures of the Manuel Jimeno, and further he says not.

Edw L Williams

Sworn to & subscribed before me this 29th day of May A D 1866

John D Wheeler
Clerk Dist Ct S Dist Cal

June 29/63

No 314

U. S. Dist Court
South'n Dist Ala

Jesse D Carr, sub for
Thomas A. Larkin

vs

The United States

affdvt E. L. Williams

Filed June 29, 1863
John D Wheeler
Clk

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United States District Court for the South'n Dist. Cal'a

Thos O Larkin, Appellant
Substituted for Jose G Limantour
vs
The United States
Appellee

No # 314
L.C. 782
Rancho del Sabinal

The President of the United States of America
To
E. W. Beale, Surveyor General of the United States for the State of California
Greeting

Whereas an order has been this day made in the above entitled cause by the District Court of the United States for the Southern District of California Commanding that you be and appear before said Court, in the City of Monterey, California on the fourth day of August AD 1862 at 11 o. clock am of said day there and there to testify on the part of the appellee above named and that you then and there have with you the original Grant, in said case now on file in your office.

Now therefore you are hereby commanded that all business and excuses being laid aside. you be and appear before the District Court of the United States for the Southern District of California, at the United States Court House in Monterey California, on the

Fourth day of August AD 1862 at 11 o'clock AM
then & there to be held by ~~for the part of the~~ a in a certain cause now
of said day, and that you then and there have with
you the Original Grant, in the Case of Thomas O'Larkin
vs The United States, being numbered #782 upon the
Docket of the "Land Commission" and therein entitled "Jose
Y. Limantour vs The United States" and upon the
Docket of said District Court #314, and hereof
fail not

Rendering in said Court, wherein Thos O'Larkin is Appellant vs Thos L. Appellee — on the part of said Appellee.

Witness, Wm Fletcher Hoight
Judge of the United States District Court
for the Southern District of California
with the seal of said Court attached
this the 2d day of July AD 1862

Attest

John B. Wheeler, Clerk

~~Personally served on E. F. Beale Surveyor General of U. S. for State of California by leaving a certified copy with him at his Office in the City of San Francisco on the twenty fifth day of July — 1862~~

~~N. D. Barrows~~

~~U. S. Marshal. Dist Cal~~

~~By Jacob R. Leese.~~

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I hereby Certify and Return that on the 25th day of July 1862. I personally served on J. R. Conway Chief Clerk of E. F. Beale U. S. Surveyor General at his Office in the City of San Francisco. State of California with a Copy of the foregoing subpoena the said E. F. Beale being without the State and now at Washoe as I had been duly informed

N. D. Barrows
U. S. Marshal
S. Dist Cal
By Jacob R. Leese.
Deputy

San Francisco
July 25th 1862

July 2/62

No 314

U. S. Dist Court
South^n Dist Cal^a

Thos O Larkin
Subp for
John M Limantour
Appellants
vs
The United States
Appellees

Subpoena duces tecum
issued July 2d 1862

Filed July 26. 62
John D. Wheeler Clk

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

Thomas O. Larkin Appellant Vs The United States Appellant	In District Court No 314 Cienega del Gabilan Land Com No 136

Isaac Hartman Esq. is hereby substituted as the sole Attorney of record of the Appellants in the above intitled cause, July 28th 1862

Rachel Larkin
Executrix Estate Thos O. Larkin
Frederic H. Larkin
Executor Estate Thos O. Larkin

July 28th

No 314

Thomas O. Larkin

Vs

The United States

Substitution of Attorney
of Record

Filed July 28th 1856
John S. Wheeler
Clerk

United States District Court, Southern District California

Thos O Larkin substituted for Jos Y Limantour.

"

The United States

The President of the United States of America. To

W. C. Hopkins — Greeting

You are hereby required that all & singular business & cares being laid aside, you appear and attend before the United States District Court for the South'n Dist Cal'a at the Court House in Monterey Cal'a on the 1st Monday in August A.D. 1860 at 11 o'clock A.M. of said day, then & there to testify in the above stated cause now pending in said Court on the part of the United States. And for a failure to attend you will be deemed guilty of a Contempt of Court and liable to pay all losses and damages sustained to the party aggrieved thereby

Witness Hon. S. W. Haight Judge of U.S. Dist Ct of Dist Cal'a with the seal of said Court attached this 24th July 1860

Attest John B. Wheeler Clerk
U.S. Dist Ct of Dist Cal'a

I hereby Certify and Return - That on the 29th day of July A.D. 1862. at the City and County of San Francisco State of California. I personally served on R. C. Hopkins a Copy of the within Subpoena by delivering the same to him and at the same time showing to him the original thereof -

N. D. Farrar
Marshall
Dist. Court 1st Dist. Cal.
By J. R. Lesser
Deputy

San Francisco
July 29th 1862

Hopkins' Return for Witness Fees
vs
The United States
Filed July 31st 1862
Amos Ackerman
Clk

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July 24/62

sent of parties in this Cause
continued to next term to prevent
appearance of the persons named in the
affidavit of Plaintiff now on file on motion for new
trial. And the Court permits B. F. Ca-
ally for and behalf of the U. S. to take a
~~[illegible]~~ paper recently found in the Clerks office
purporting to be the report of the Bureau
in cipher overseer in this cause
to be used as an exhibit in taking the
affidavits above mentioned, and that a
copy of such affidavits if any shall be made shall be filed
with the clerk of this court
for Plaintiff or his counsel ~~in this cause~~ 30 thirty days before
the next Term of this court.

No 314

U. S. Dist Court
South Dist Ala

Wm. O. Larkin
vs
The United States

Mem. of order to be ent.
by Consent of Counsel and
agreed to by them in open
Court, as drawn up by Patt-
erson atty of Claimt. & corrected
by the Court, with consent of
the attys for the U. S. and
the same filed this 12th
day of June A.D. 1863

John D. Wheeler
Clk

June 12/63

United States District Court, Southern District of California

Regular Decr Term 1857
July 10th 1858.

Hon Isaac S. K. Ogier Judge

Thomas O. Larkin, appelt

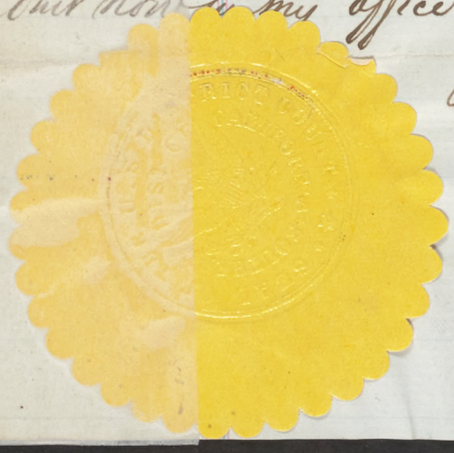
vs

The U. States appellee

No 314

Now on this day come the parties aforesaid by their attys aforesaid whereupon the Atty of Appellee reads and files his motion and affidavit for a new hearing in this case which motion is continued to the next Decr Term of this Court at Monterey with leave given to the parties to file new affidavits

United States of America, South^n Dist^t of Cal^a ss. — John S. Wheeler Clerk of the United States District Court for the South^n District of California hereby certify the above to be a true & correct copy from the records of said Court now in my office



Witness whereof I hereunto set my hand & affix the seal of said Court at Monterey this the 22d day of July A.D. 1868

John S. Wheeler
Clk U.S. Dist Court South^n Dist Cal^a

Feb 10/58

No 314

Susan D. Gunn

vs

The United States

Appellants Opinion of C. Sims & Exhibits

Filed Oct 7, 1863
John D. Wheeler
Clk

314 SD
PAGE 123

1863
Oct 7
314

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

Lefevre D. Carr substituted
for Thomas O. Larkin Appellant
vs
The United States Appellee
} No 258

To Billington C. Whiting U.S. Attorney
for the Southern District of California
Sir!

You will please take notice that on the 13th day of October A.D. 1863 at 11 o'clock A.M. of said day or as soon thereafter as the same can be heard at the United States Court Room in the City of Monterey the said Appellant will move to amend the record in this case made of the date of the 10th of February 1858 by striking out the words "motion and" where the same occur in the record aforesaid. October 7. 1863

Isaac Wentworth
Atty for Appellant.

No 314

Oct 7/63

Isaac D. Carr

vs

The United States

Notice of motion to answer second

Received a copy of the within Oct 7. 1863.
B C Whiting U S Dist Atty.
By A D Whiting Clk

Filed Oct 8th 1863
John D Schuler
Clk

314 SD
PAGE 125

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

Isaac D. Carr substituted
for Thomas O. Larkin Appellant
vs
The United States Appellee
} No 314.

Now at this day comes the said Appellant by his Attorney and moves the Court to amend the record in this case made on the 20th day of February A.D. 1858 by striking out the words "motion and" where the same occurs in the entry aforesaid

Isaac Hartman
Atty for Appellant

No 314

Dec 7/63

The United States

vs

Jesse D. Carr

" "

Motion to amend
record

" "

Filed Oct 7. 1863
John D Schuler
Clerk

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

The United States Appellee vs Thomas O. Larkin Appellant	No 314 Lizarza del Solicitor

J. R. Little being duly sworn upon his oath says, that from the latter part of July A.D. 1858 until about the middle of the summer A.D. 1861 he was the United States Attorney for the Southern District of California: that shortly after entering upon the duties of his office aforesaid his attention was particularly called to several cases then pending before said Court among which was the above entitled cause and that of Clement Bastro Ats The United States No 255. At the term of the said Court immediately following this affiant's entering upon the duties of his office as aforesaid he was urged by counsel of Clement to take up and dispose of what was - pretended to be a motion for a new

trial in the above entitled cause, and which appeared to have been filed by the predecessors in office of affiant. Upon an examination made of the papers files and entries in the cause for the purpose of preparing certification for hearing, he could discover no notice of motion, nor any motion for new trial on file, or any paper purporting to be such, excepting the affidavit of the former District Attorney filed in this Court on the 10th day of February A.D. 1858, and enclosed motion and affidavit for new trial; nor could this affiant ascertain upon inquiry from the Term Clerk of this Court and others here informed that any such notice and motions ever were filed. On the contrary this affiant is well informed and believes from every thing he could ascertain concerning the same that the aforementioned affidavit of his predecessor was the only paper ever filed in this cause intended as a motion for new trial

And further this affiant saith not

J R Litchell

Sworn to and subscribed before me
this 12th day of September A.D. 1863.

James N. Sanders

Notary Public.

Sitz 12/63

No 314

The United States

vs

Thomas O. Larkin

Affidavit of
J. R. Ritchie Esq
on motion for
re-hearing

Filed Oct 7, 1863
John T. Wheeler
Clk

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

The United States
Appellee
vs
Thomas O. Larkin
Appellant

No 314

Cienega del Sabilem

Isaac Hartman being duly sworn upon his oath deposes and says, that sometime previous to the month of February A.D. 1858 he was retained by the late Thomas O. Larkin Esq as associate counsel in the above cause to Gen Morgan Newton Esq who was the Attorney in the above cause, in the prosecution and argument of the same. Affiant further says that accordingly he assisted in the prosecution of said cause for trial, and that on the 2nd day of February A.D. 1858 he appeared in open Court and assisted the said Morgan Newton in the argument and submission of said cause on behalf of said Appellant; and that after the confirmation of said claim by this Court he drafted and presented to the Court for its signature the final decree in this cause.

Affiant further states that he will remem-
-ber the occasion of Pacificus Ord Esq the
former U.S. Attorney for this District com-
-ing into Court and filing the affidavit
now on file, endorsed "motion and af-
-fidavit for new trial", and dated Febru-
-ary 10. 1858; that immediately after said
paper was filed and on the same day
affiant examined the same, and was sur-
-prised to find that there was no motion
for new trial filed, and that the paper
alleged to be such was nothing more than
the affidavit aforesaid. Affiant also call
-ed the attention of his co-counsel to the
same who also examined said paper and
expressed his astonishment at what he
called the loose practice of the District Atto-
-rney. Affiant further states that no notice
of a motion for a new trial was served
upon himself or his co counsel, nor did
he or his said co-counsel ever agree to
waive the service of any notice of such
motion for new trial, nor did they at
the date last aforesaid or at any other
time agree or consent to the continuance
of the aforesaid alleged motion for new
trial. And further affiant saith not

Isaac Bertman

Sworn to and subscribed before me
this 15 day of August A.D. 1863.

John J. Wheeler
Clerk of Dist Ct of Dist Calif

Aug 1863

No 314

The United States

vs

Thomas O. Larkin

Affidavit of
Isaac Hartman.
On motion to amend record

Filed Oct. 7. 1863
John D Wheeler
Clk

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

314 SD
PAGE 136

The United States. appellee — No 314

vs

F O Larkin appellant — "El Gabilan"

John O Wheeler being duly sworn upon his oath says. that he is at this time, and has been since the month of December AD 1861 Clerk of the U S Dist Court for the South'n Dist of Cal'a. that prior to that date and during the years 1860 & 1861 he was employed therein much of the time as Deputy Clerk, that he is and has been during the years and time aforesaid Conversant with the Records and Papers appertaining to said Office that he has made frequent examination of the Records and Papers therein in the Case of The United States vs F O Larkin No "314 on the Docket of said Court. and particularly in reference to any proceedings had in said Case for a New trial. That he has never seen. or heard of any motion for a new trial in said Case other than a certain document filed therein on the 10th Feb. 1858 and endorsed on the back "Motion & Affidavit for New trial." which said document is an affidavit of O Ord Esq and that he believes no motion for a New trial in said Case was ever filed therein

Sworn to & subscribed before me
this 13th day of Oct 1862
W. M. Wright
U.S. Dist Judge S. Dist Ga

John S. Wheeler

Oct 13/63

No 314

U. S. Dist Court
South'n Dist Ga

Jesse D Carr, Sub, for
F O Larkin

v

The United States

Affd of Jos Whaley

Filed Oct 13/63
John Dohalen
Clk

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

Thomas O. Larkin
Appellant

vs

The United States
Appellees

Case No. 314

Ciénega del Gavilan

Docket No. 782

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Decree

This cause came 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 March 3. 1851 on a transcript of the decision and proceedings of said Board, and the papers and evidence upon which said decision was made, and the other evidence adduced by the appellant before this Court. And it appearing to the Court that Thomas O Larkin had been heretofore substituted in this Court by its order as claimant and appellant instead of the said Ignacio Limantour. and Counsel for the respective parties having been heard,

It is Ordered, adjudged and decreed that the decision of said Board of Land Commissioners be and the same is hereby reversed and that the claim of the said appellant Thomas O Larkin is good and valid and the same is hereby confirmed to him as follows, to wit; Eleven leagues of land and no more situate in the County of Monterey, State of California, and bounded as follows On the North by the Ranchos of Los Vergeles and La-

Natividad, and between the Rancho of San Justo de Castro, and the arroyo of San Benito on the East. And the Rancho of Sausal, Alisal and Spence on the West. and the Cañada de Chualar on the South according to the Calls of the Grant in this Case and is more fully described in the Map in this Case attached to the depositions of Dre Rafael Gonzalez to which reference is hereby made. Provided that the Quantity of land hereby Confirmed within the boundaries aforesaid is not more than Eleven square leagues of land, and provided also that if the Quantity of land within the boundaries is less than eleven square leagues of land. that then Confirmation is hereby made to such less quantity of land and no more

Given under my hand in open Court this 5th day of February AD 1858

Isaac S K Ogier
U S Dist Judge pro tem of Dist of Calif

Filed this 5th February 1858

J Sims Clk
G F Coleman Deputy

United States District Court for the Dist of California
Regular December Term 1857
February 20th A.D. 1858

Thomas O. Larkin Appt.
vs
The United States Appee

No 314

Now on this day came the parties aforesaid
Whereupon, the atty of appellee reads and files his motion and affidavit for a new hearing in this Case. Which motion is Continued to the next June Term of this Court at Monterey. With leave given to the parties to file new affidavits

Regular June Term 1858
June 15th 1858

Thomas O. Larkin appellant
vs
The United States appellee

No 314

This Cause Continued over to next term of Court

Regular December Term AD 1860
March 19th AD 1861

Thos A Larkin appl
vs
The United States appee } No 314

On motion of J R Mitchell Esq Dist Atty, this ordered that a Subpoena duces tecum issue directed to Lt Mandeville U. S. Surv Genl for the State of California Commanding him to be and appear before this Court, on the 4th day of April AD 1861, at 11 o'clock AM of said day, and that he then and there have with him the original Grant in this Case, now on file in his Office

Special Term AD 1862
April 4th AD 1862

Thos A Larkin appl
vs
The United States appee } No 314

This Cause Continued until next term. —

Regular June Term 1862
July 2. 1862

Thos O Larkin appt
vs
The United States appe. } No 314

On motion of R J Whiting U S Dist atty this ordered that a Subpoena duces tecum issue directed to E F Beale U S Surveyor General for the State of California, Commanding him to be and appear before this Court on the 4th day of August A D 1862 at 11. O clock AM of said day, and that he then and there have with him the original Grant in this Case now on file in his Office

Regular June Term 1862
Augt 4. 1862

Thos O Larkin appt
vs
The United States appe } No 314

In this Case the party Claimant having filed a duly executed authority substituting Isaac Hartman as attorney of record herein. Said Hartman is hereby so substituted and entered as atty of record

And it appearing that the parties hereto are not prepared for the hearing of this Case at the present term of the Court, the Same is hereby passed informally

Regular June Term 1862
Aug 30th 1862

Thos O Larkin appt
vs
The United States appe } No 314

On motion of R J Atkinson Esq the U S Dist atty present and consenting thereto. —

Ordered that B C Atkinson Esq be associated with the U S Dist atty as assistant Counsel in behalf of the United States in this Cause, and it is further Ordered, that this Cause be continued until the next regular term of this Court to be holden in Monterey and that the United States be allowed to take further testimony herein

Special Term 1862
October 6. 1862

Thos O Larkin appt
vs
The United States appe } No 314

Ordered that this Cause be continued to the next term of this Court.

Gram Mitchner bought seven
Cooper 1 — Sessi 2 — Blanchin
3 — & Juan Antonio 4 — who
died within hours. & 1/9 of
these 4 slaves belongs to
Foster

Gracelefsa Vallejo
was admonished
& had all the stock
& Forlow has sure
had his part & Gregory
was here this show
to pay for the 4.

Mortgage for 750.$
to Escobar

United States of America
South[ern] Dist[rict] of Cal[ifornia]

I John S Wheeler Clerk of United States Dist[rict] Court for the South[ern] District of Cal[ifornia] do hereby certify the above and foregoing to be a true and correct copies of certain orders made in said Court with the Decree thereof as the same appear of record in my Office in the cause of W S Parker v. The United States No 5 as from the Docket of said Court.

In testimony whereof I hereunto set my hand & the seal of said Court this 28th day of April A.D. 1863

John S Wheeler
Clk U S Dist Ct S Dist Cal

Oct 19/63

No 314

See Entry of order of Feb 10/68 which was missing from

8866-acres

Wm Cooper
" Blumenthal
Dean
Goodlope
Austin Barnett
M Lee
Joseph de Arroyo (Estrada)
Zeferino Lobirans, Mercedes Lo
M Polot
Jno Antonio Oakley
Jnom Antonio Cavel the
Heirs.

886-6/10

Certif Copy from record

Filed Oct. 19. 1863
John D Wheeler
Clk

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United States Court for the Southern District of California

Jesse D. Carr, Substituted for Thos O. Larkin } Appellant
vs } No 314
The United States } Appellee

It is stipulated and agreed between Isaac Stentman Atty for Claimant, (Claimant being present in Court) and the District attorney for United States, that the order for continuance heretofore entered herein in this Case until Next term of this Court be set aside and that the Next hearing be heard this day with leave now granted by the Court to appellees to file by Monday the 26th inst, photographic copy of the original grant in this Case together with such affidavits as may be made heretofore or hereafter by Edward S. Williams and R. C. Hopkins & Certificate of United States Surveyor General for California, attached thereto and

and the same shall be considered as filed and offered or used on the hearing of this Motion, the same as if now offered or used on the hearing to day of this Motion. said ~~October 19th 1863~~ Motion and affidavits being subjected to objection as follows, to wit, to reading affidavits upon said Motion

Isaac Hartman
Atty Appellants
B. C. Whiting
U. S. Dist Atty for
the Southern Dist Cal

Oct 19/63

No 314

U. S. Dist Cmt
South Dist Calif

J D Lann sub. for
Thos O Larkin

vs

The United States

Stip relative to admission
of affts.

Filed Oct. 19. 1863
John W Wheeler
Clk

314 SD
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United States, District Court
for Southern District of California
El Gabalin

Jesse D. Carr, Substituted
for Thos O. Larkin } Appellants
vs. No 314
The United States } Appellees

B. F. Ansley associate attorney on behalf of the United States, being duly sworn says: In reply to the Motion & affidavits filed herein by Isaac Hartman Atty for Claimant, to amend the record of this Court made February 10th 1858, that said Motion should not prevail. For that the Decree of this Court confirming said grant was made on the 5th day of February, 1858 was an interlocutory Decree, and the Motion for New trial or New hearing was made on the 10th day of February 1858 in pursuance to the then practice and Custom of said Court, as affiant is informed by said Isaac Hartman Motions non

made orally in Court. And affiant
further says that the record shows
that said Motion was made in the
presence of attorneys of both parties
using this language. "Now on this
day come the parties aforesaid by
their attys aforesaid." And affiant further
says that on the 5th day of June
1838 said Isaac Hartman as attorney
for Claimant filed his Notice to the
Clerk of said Court & The United
States District attorney for said
District. "That the argument of
the Motion for New trial in said
Cause (No 314) will be brought on
for hearing before said Court on
the 18th inst (June 1838) at 11 o'clock
A.M. of said day or as soon thereafter
as the same can be heard
June 2nd 1838. Isaac Hartman
Attorney for Claimant." This Notice
has the Court & parties entitled as
also the No 314. whereon affiant says
said Claimant by his Attorney Isaac
Hartman duly recognized the
regularity & existence of said Motion

for new trial or new hearing
Affiant further says that thereafter
such proceedings was thereupon
had in this Case No 314 as follows
June 18th 1838. This Cause Continued
over to next term of this Court.
March 19th 1861 a Subpoena duces tecum
was issued by D.R. Mitchell Dist atty
to the U.S. Surveyor General to have
with him in Court the Original
grant in this Case on the 7th day
of April 1861 at 11 o'clock A.M.
April 7th 1861. "This Cause Continued
until next term".
July 2nd 1862. B.C. Whitney ~~Cause~~ Dist
atty caused to be issued another Subpo
=ena duces tecum to E.F. Beals then
U.S. ~~Dist~~ Surveyor General to produ
=ce said original grant in this
Case on the 4th day of August
1862.
August 4th 1862 Said Isaac Hartman
was substituted attorney for Claimant
and the Cause passed informally, viz
"And it appearing that the parties
"hereto are not prepared for the hearing

"of this Case at the Present Term of
"this Court, the same is hereby passed
"informally."

August 30th 1862 an order is entered up that B.G. Anthony which should read ~~B.F.~~ Anthony, be associated with the U.S. Dist Atty as associate Counsel in behalf of the United States in this case, and that the cause be continued until the next ~~term~~ regular term of this Court &c.

October 6th 1862, ordered that this cause is continued to the next term of this Court.

June 9th 1863 B.F. Anthony, makes motion for continuance which is laid over until the arrival of ~~Mr~~ "Wm Patterson of Counsel for Claimant."

June 11th 1863 This cause is continued until June 22d 1863.

June 12th 1863. the following order is "entered. "Now Comes the parties in this "case into Court by their respective "attorneys. and by Consent of parties "in open Court. It is ordered that "this Cause be continued to next

"term of this to procure the affidavits
"of the persons named in the affidavit
"of P. Orel (now on file) on Motion for
New trial.

June 29th 1863 a Motion on affidavit was made by this affiant with affidavit of E.L. Williams to have exhibited the original grant in this case terms in the order concerning said Motion a "certain paper" which was over ruled. Said affidavit of affiant and Williams with the exhibit attached to the latter is hereby referred to & made part of this affidavit

Oct 7th 1863 Motion of Isaac Hartman Jun Counsel for Appellant, to amend the record of Feb 10th 1858. set for hearing on Oct 13th 1863.

Oct 13th 1863 The above Motion Continued to Oct 19th 1863.

Affiant further says the aforesaid Motions & orders will more fully appear by reference thereto in the Minute books of this Court which are herein referred to and made part of this affidavit

Affiant further says that said
S.R. Ketchell to whom affidavit is filed
by Claimant on this Motion, appe
ared at June term of this Court
1863 and informed this affiant
that he was hired to attend to this
case on behalf of Claimant and
subsequently learning that said Hewston
had assured, informed affiant that
Mr Hewston would attend to this
page 53 of 3rd book of minutes part of this record
case, affiant moves order in this case on
whereof affiant says said motion
should not prevail.

B F Montgomery

Sworn to & subscribed before me
this 19th day of Oct 1863
John D Wheeler
Clerk Circuit Court

Oct 19/63

No 314

U. S. Dist Court
South'n Dist Cal'a

Jesse D Carr, Sub. for
Thos. O. Larkin
vs
The United States

Aff't of B. Aukemy.

Filed Oct. 19. 1863
John D Wheeler
Clk

Lefan v. Cass. Appellant
vs
The United States. Appellee

No 314.

Points for Appellant.

1. This Court has no jurisdiction in the motion at bar.

The Act of March 3. 1851 was a special statute, raising a special tribunal, and prescribing a special mode of procedure.

That mode of procedure was as follows

1. A Petition was to be presented by claimant, setting forth his title
2. The Commissioner was to decide upon the evidence as to the validity of the claim
3. From this an appeal might be taken to the District Court.
4. In the District Court the Appellant filed his Petition, the Appellee his answer.

5. Additional evidence might be taken.
6. The Court should decide upon such further evidence, and the evidence in the transcript
7. It should render a decree confirming or rejecting the claim
8. From this decree either party might appeal to Supreme Court

Nowhere in this Act is anything since about bills of review, nor can for new trial or anything of that sort. Nor is power given anywhere for the Court or Commissioners to pass rules which would authorize such practice.

This view is sustained by the action of the Northern District Court in the Gentilleau case which was afterwards affirmed by the Supreme Court See also Brightly's Dig 112. 113.

2. ~~The Act~~ ~~Has been~~ having expired ~~since the de~~ at which the decision was rendered, the

decree by operation of law has become final unless the party avails himself of his remedy of appeal to Supreme Court. But 5 years having elapsed since decree was rendered, no appeal will lie.

Sibbalds case 12 Gr 492.
12 Curtis 812. Sinclair case Hancock J.
12 Curtis 203.

3 It will not do to say that the decree ~~was~~ is not final in this case. The motion for new trial did not suspend or keep it open. There was no order of the Court to suspend the decree. It was final the moment it was entered and has remained so ever since.

4. There are many defects and errors apparent in the proceeding as has such as want of notice of motion, motion itself, the affidavit of German District

attorney

being substituted and used for the motion. Although these things of themselves are perhaps not sufficient reasons for annulling the motion, yet when a party comes into this Court after a lapse of years then five years, and asks to have a solemn decree of this Court set aside, he should be held at least to strictness in his proceedings, notwithstanding ~~there is~~ a mere entry in the records shown, ~~that which the contrary~~ there which the files themselves contradict.

I apprehend the Court will hesitate long to grant a stale motion which comes before it in such a doubtful and irregular manner.

J. Newman
Atty for J. D. Carr

314
U. S. Circuit Court
South Div. Ala

J. B. Carr Adm'r
J. D. Carr
vs
The U. S.

Motion of Claimt.

Filed Oct. 20th 1863
John Dickey
Clk

314 SD
PAGE 161

0220/3

Case U.S. U.S.

Now on this day came the parties into Court whereupon the photographic copy of General Grant with affidavit of E.S. Williams and certificate of R.H. Stoffelmir & U.S. Sawyer General attached, having been filed, on Oct. 26/63 in conformity with the leave ~~given~~ ~~to~~ heretofore granted by the Court on the part of the United States leasing the Motion for New trial. And the Motion for New trial being fully presented, upon the affidavits & the Motion attached the same is hereby submitted to the Court for decision. And it is further ordered that the U.S. have three weeks from ~~this~~ day in which to file brief in support of said Motion. A copy of the Brief be served on S.D. Cross Counsel for Defts & that he have ten days in which to reply.

Nov 2/63

No 314

A J Dub Comt

Pltff Dub Calu

S D Carr

sub for

T O Larkin

Order

Filed Nov 2/63

John D Wheeler

Clk

314 SD

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United States District Court for
Southern District of California.

Jesse D. Carr, appellant
vs.
The United States, appellee

No 314

Brief of Appellee

Statement of the Case

In this Case (when Thos O. Larkin's Name Stood on the record as Claimant & appellant) a decree of Confirmation was rendered for Claimant on the 5th day of February 1857.

On the 10th of Feb 1857 at the same term T. Ord then U.S. Dist atty read and filed a Motion & affidavit for "New hearing" upon the ground of newly discovered evidence, after the decree (See Same on file among the papers)

On the Same day all parties being present in Court, an order was Made and entered upon the Minutes, Continuing the hearing until Next (June) term of the Court, with leave to both parties to file affidavits.

2 (See Copy of Minutes of the Court filed Oct 19th 1863)
On the 4th day of June 1857 Isaac Hartman then and now acting atty for Claimant filed a Notice directed to the U.S. Dist atty, that he Hartman would bring on the Motion for New Hearing, to be heard on the 13th June 1857. (See this Notice among the papers filed June 4th 1857.)

The Cause was not heard, but continued, and in 1861 a Subpoena duces tecum was issued commanding U.S. Surveyor general to appear bring with him the original grant in this case. The Cause was again Continued.
In 1862 another Subpoena duces tecum was issued also by the U.S. Dist atty to the U.S. Surveyor general requiring him to bring with him the original grant in this case returnable on 4th of August 1862.
On this same day (4th Aug) Isaac Hartman was Substituted as atty of record for Claimant, the original grant not being returned, the parties not being ready for trial the Case was

3 passed informally (See Copy of Minutes filed Oct 19th/63)
At the June term 1862 the Cause was
continued to June term 1863 with leave
to take affidavits.

At the June term 1863. Mr H Patterson
appeared in the case as atty for Claim
=ant (the Claimant Jesse D. Carr being pre
sent in Court) When B.F. Ansberry
associate counsel with U.S. Dist Atty
read & filed his affidavit showing the
death of Thos O. Larkin in 1858, also
that his widow & son were devisees in
Larkins will asking that the cause
be revived in their Names, When Mr
Patterson exhibited a deed to the Court
from the wife & son of said Larkin
for the land in dispute dated in the
year 1860. to Jesse D. Carr. whereupon
the Court ordered. the Cause to be
revived in the Name of Jesse D. Carr
as Claimant & appellant. (See affidavit
on file and order on the Minutes)
This same order shows the Cause Contin
=ued by the "Consent" of parties". to next
(December) term for 1863, with leave
to U.S. to file affidavits of the "persons
named in P. Ad's affidavit" aforesaid.
On the 19th of October 1863. a Stipulation

was filed, signed by said Hartman atty for Claimant and the U.S. Dist atty whereon it was stipulated and agreed that the Order entered at June term 1863 Continuing the Cause to December term 1863 be set aside and that the Motion be heard on the said 19th Oct. and also that a photographic copy of the original grant with certificates of the U.S. Surveyor General and Affidavit of E L Williams and R.C. Hopkins attached be filed by Oct 26th 1863 and considered as read on the hearing. whereupon the affidavits & papers were read which are enumerated in the Minutes of the Court in this Case. as shown on the 19th Oct 1863. & the Case to be further considered. (See said Stipulation filed Oct 19th 1863 & minutes of the Court of that date)

On 3rd Nov 1863 said Stipulation & order being complied with the Cause was finally submitted with leave to U.S. to file brief on 9th Nov 1863.

This is a brief history of the case And it is seen that No Motion to dismiss, or objection made to the proceeding adopted by the Court-

5 or perend On the part of the U.S.
from entering the decree to the trial
of this Motion for "new hearing"
But to the Contrary at the June term
1863. Claimt by his atty Mr Pattison
in consenting to the continuance
of the Cause with leave to procure
& file affidavit of Williams and
others, corroborates the whole practice
adopted by the Court & parties, and
is barred from objecting to the Mode
of Practice thereafter

If a decree be entered up by consent
of parties, neither party can
appeal from it. (See Daniell's Ch Plead=
=ing & Practice p 1602. & cases cited)

If Consent has this effect on the
statutary right to appeal, Consent as
in this case will surely bar the party
from gainsaying what he has
sanctioned, in regard to practice

Appellants Brief

But notwithstanding all this
Mr Cartmen in his brief styles
this proceeding "a Stale Motion"
and apprehends "the Court will hesitate
long to grant a Stale Motion which
comes before it in such a doubt=

6 -ful and irregular Manner." (see close of Hartman's brief.)

Though after enumerating the irregularities and defects in the practice the Court has seen fit to adopt; he doubts if he can gain any advantage by it. He on this point says "Although those things of themselves are perhaps not sufficient reasons for overruling the Motion; yet when a party comes into the Court after a lapse of more than five years and seeks to have a solemn decree of this Court set aside he should be held at least to strictness in his ~~xx his~~ proceedings".

In reply to this, we correct an error it was "five" days instead of "five" years." when this "solemn" decree was impeached by the Motion

Points Made in Appellant's Brief

1st The District Court in land cases is confined to five things or acts 1st Receive & file by its clerk the Petition & answer, on appeal from the Board.

2nd Take additional evidence

7 3rd Enter up a decree of Confirmation or rejection, upon the documentary evidence in the transcript & the additional evidence taken.
4th Within five years after decree, on application of the aggrieved party tell the clerk to enter an order of appeal. and
5th Five years having elapsed since the decree & no appeal taken.
Urge "This Court has no jurisdiction in the Motion at Bar".

Result

Consequently notwithstanding the original grant was forged & obtained by fraud. which did not happen to be discovered until "five" days after the decree was entered, the Court can furnish no remedy and forery & fraud goes unrebuked by justice.

Argument

This extraordinary announcement of the Jurisdiction of this Court is no lip Startling and ~~novel~~ novel, than the authority cited by the learned Counsel in support of his theory. Counsel first cites

the case Ex Party Sibbald vs United States 12 Peters 492 – 12 Curts Cond Rep p 812, This case originated in the U.S. Supreme Court. On a Motion "to reform the Mandate issued by the Court, in this case, at January term 1836. so as to conform the "same to the opinion given by the Court "at that time," &c The Court after considering the case grant the Motion upon the ground that the Supreme Court having decided the whole merits of the case at the former term which had elapsed they could not alter the decree, and it was the duty of the District Court to execute it.

And in support of this view the Court uses this language.

"No principle is better settled, "or of more universal application, "than that No Court can reverse or amend "its own final decrees or Judgments, "for errors of fact or law, after the "term in which they have been "rendered, unless for clerical Mistakes "Res. 3 Wheat 591; 3 Peters 431. or to "reinstate a cause dismissed by

9 "Mistake, 12 Wheat. 10: from which it
"follows, that no change or Mod=
"ification can be made, which may
substantially vary or effect it in
"any material thing. Bills of review,
"in cases in equity, and writs of error,
"coram vobis, at law are exceptions,
"which (however) cannot effect
"the present motion."

The reason why these "exceptions"
do not effect the motion before
that Court, the court gives. thus
"When the Supreme Court have
"executed their power in a cause
"before them, and their final de=
=cree or judgment requires some
"further act to be done it cannot
"issue an execution, but shall
"send a Special Mandate to the
"Court below to award it."

We accept the general rule laid
down in the ~~first~~ above quotations
as correct law. Our most cheer=
=fully avail ourselves of the "exception,
"that "Bills of review in cases in
"~~xxx~~ equity." gives the Court Juris=
=diction & power to "reverse or annul
"its own final decrees or judgments."

10 If ~~the District Court under~~ the act of Congress of the 3rd March 1851 organizing the Board of Commission ~~and~~ confers ~~equity~~ jurisdiction on the District Court or clothes it with equitable powers in ascertaining the "validity" of private land claims. or in other words if the littigation of the "validity" of a land claim under a grant from Spain or Mexico, is "a case in Equity;" then Mr Hartmans authority in the Sibbald case, proves, beyond a doubt that said act does not present "a Special Mode of proceeding" as he alledges, for a Bill of review is peculiar to equity practice.

But we are not confined to the Sibbald case alone. for authority to show the fallacy of Mr Hartmans theory,

In the some what celebrated case of Vicente Gomez v.s. The United States popularly known as the "Peruche Grande" case reported in 23 How 326. is a full recognition of the power

11. and jurisdiction of the District Court, after decree of Confirmation; and to apply the Chancery practice, in the use of the remedy of "rehearing," and "Bill of review" to "reverse or annul," a decree, or "final decree," and that two after a "term" or time had elapsed, after the term in which the "decree" was entered.

This case was taken to the Supreme Court by appeal from the Southern District Court of Cal. ~~and the~~ Claimants, and after several Motions, the Court vacated the order dismissing the appeal, and recalled the Mandate on the ground that no order had been made by the District Court granting an appeal.

But it is the position in the Dist Court which is in point. At the June term 1857 the claim was confirmed, but no decree entered up (See p 334.-336. at a Subsequent term of the Court a Motion was made for an appeal but held over (to Dec 1858) and

12 Decree was entered up Dec term 1837 or Jan term 1838. At Dec term 1838 Gitchell moved for U.S. to withdraw Motion & appeal made "by U.S. and "also filed another Motion for re-hearing of the cause, substituting the last "a Motion (for re-hearing) which had "been made by Mr Stanton, then "in San Francisco, and also "representing the United States as "its specially retained attorney. A day was then fixed by all the parties, for hearing the pending Motion (re-hearing). On which day a Motion was made for Continuance, which was overruled or "refused, on the ground that the proper Motion under his charges was to ask for leave to file a bill of review." p 336-337.

The "charges" alluded to were shown by affidavit for Continuance, showing that the decree had been fraudulently obtained.

The Supreme Court in discoursing upon the above proceedi

13. in the case says "The case being
"still before the Court, we do not
"perceive any irregularity in
"the proceedings. Besides the mot-
"ion for granting the appeal, the
"Court had jurisdiction of
"the cause to determine what
"proceedings the claimant was
"entitled to under the circum-
"stances of the case, to get the
"benefit of the decree, by Survey
"or otherwise."

The Court in speaking of the power of the District Court to shape its practice beyond the supervision of the Supreme Court says a motion to dism-
"iss. "is not an affirmance
"of the judgment of the Court
"below. It (the dismissal) remits
"the case to the Court to have
"proceedings to carry that ju-
"dgment into effect, if in the
"condition of the case there is
"nothing to prevent it."

This language clearly implies that the case after decree of confirmation may be in

14 a "Condition" to not be certain
so as not "to carry that judgm
=ent into effect."
What is meant by carrying a
"judgment into effect" or after
decree, of confirmation, is to
complete the location & segregat=
=ion of the land by survey and
final decree. So claimant may
get a "legal title" to the land.
Hence the phrase "nothing to pr
=event." means if there is no
Bill of review, pending or any
motion & proceedings sanctio=
=ned by the practice of the Court
which impeaches the decree
of confirmation for any of
the causes known to Chancery
practice.
And of this the Dist Court is
the sole judge. In some case
on this point p. 340, The Court
says in alluding to the proceedings
before it. "That is for the consi
deration of the judge xxx the
in the Court below, with
which this Court has nothing to do,
unless his denial of such motion

15 gives to the party concerned a right to the writ of Manda=mus." That is to say, the Supreme Court decides, was as to the quest=ion, whether there is any thing pending in the Court below which will "prevent it." Writ the execution of the decree or carrying "that judgment into eff=ect." is a question exclusively "for the consideration of the judge in the Court below." and is a question "with which this (the supreme) Court) has nothing to do." But by the sentence which follows; "unless his (the judge below) denial of such a motion gives to the party con=cerned (claimant) a right to the writ of Mandamus." the Court decides that when nothing is pending in the Court be=low, which in the judgment of that Court, will "prevent" that judgment from going "into effect." and the Court below should refuse to "carry the judgment into effect." Then

16 and not until then will the Supreme Court give to Claim=ant a "Mandamus" to compel the Court below to execute or "carry the judgment into effect."

Hence by these decisions the Just Court is the sole judge of the practice in his Court as to the mode of impeaching or setting aside or reversing a decree of Confirmation, if the substance of the facts which constitute equitable grounds for a Bill of review, are presented to it, and treated and recognized by the Court as equitable reasons in good conscience why the decree should not stand. And the Supreme Court will not interfere with the rules or practice it may adopt, nor with the discretion he may exercise in deciding upon such ground in the furtherance of justice.

(See 22 How 292 The Court says "It must "be admitted, that as to the matter of filing "papers and the entry of rules (orders)

17 „ under the practice of the Court such
„ modifications may be made as may fac-
„ ilitate the progress of the Court and
„ the convenience of parties; and under
„ the Court may under peculiar circumst-
„ ances avoid an act of injustice by
„ the suspension of its rules."

The only exception to this rule is, "where
„ the Statute an entry is required by the
„ Statute on a condition expressed; the
„ Court is bound by the Statute." (see 12 Sec act
of Congress 1862 providing for appeals to Dist Court)

In 22 How 297 There is another impract-
-ion upon Mr Bartmans theory, recognyd
by the Supreme Court.

In this case after decree of Confirmation
entered, on motion of U.S. Dist atty the decree
was set aside. and motion to reform the
decree continued to next term, when it
was reformed.

We will now notice Mr Bartmans 2d
authority cited to support his Theory
20 How 262 U.S. v.s. Sunol, Pacheco, Keen-
-ley and Bidwell.

In this case the decree of Confirmation
was entered in Sept 1856 & no appeal was
granted at that term of the Court. but
was granted in subsequent March

18. tum, hence in the Supreme Court ~~the~~ a question of practice arose growing out of the Statute of 3rd March 1831. as to when an appeal could be taken from the District Court to the Supreme Court. In deciding which the Court say. "The first question raised "by the Motion depends upon the "Construction of the act of Congress "of March 3rd 1831, which authorizes "an appeal to this Court in cases "of this description. The act gives the "right in general terms to the party "against whom the judgment is "rendered; and does not limit the "time within which the appeal shall "be made; nor refer to any particu "lar act of Congress by which "the time shall be regulated. It (the time) "must therefore (as a matter of course) "be governed by the judiciary acts of "1789 & 1803, which regulate writs of "error and appeals to this Court from "inferior tribunals."

This is an unfortunate authority for the learned Counsel, as by it he seeks to show his theory, that the act of 3 March 1831. presents "a special mode

9. of procedure." out of which, the District Court has no power to travel in its practice in these cases. For if Counsel's theory is the law, the time for appeal has not "elapsed". And the decree, though "enrolled", does not bar the U.S. from an appeal to this day.

But if his theory is not the law, then it is lawful for the Dist Court to adopt and inaugerate rules of practice not "expressed" in the act. To illustrate; suppose Appellees should adopt his theory, abandon their motion, and ask for an appeal under the act of 1831. What reply would Counsel make.? He would read this Sundel Case to the Court and show that the act did not provide "a special mode of procedure." but the Dist Court must be governed in its practice by other acts.

So if Counsels theory is law. the "five years" have not and cannot run to aid his decree, or bar the motion. If it is not law, the Dist Court is not confined to the act for its rules of practice

20. But if this were not so, it is within the discretion of the Dist Court if it see fit to exercise it, although the time had elapsed. to controll the case before it and the Supreme Con=rt will not interfere.

In 10 Wheat. 306 The Dos Hermanos v.s. Shields. Claimant.

In this case an appeal had been allowed within five years, but the security on appeal was not filed in the Dist Court until after the five years had "elapsed" from the decree which security was acc=epted by the Court. On Motion to dismiss the appeal in Supreme Court; The Court say. "But as the „Court accepted it (the security) it must „be considerd as a sufficient comp=liance with the ~~Statute~~ order of „the Court, and that it had relation „back to the time of the allowence of „the appeal. The mode of taking „the security, and the time for „perfecting it, are matters of „discretion by the Court granting „the appeal." Court decides the appeal to be in time. This case is analogous

21 in principle & fact of the Motion at bar and every act of the Court in the case relates back to filing of the Motion (Feb 10th 1857) and relieves it from the imputation by Counsel. as a "State Motion. The authority also confirms the doctrine of discution so unfirmly held by the Supreme Court, to be and exist in the District Court. Having as we think, shown clearly that the District Court is not confined to the Act of 1851 for its practice, but may adopt such practice and enforce such remedies as is compatable & commensurate with its jurisdiction, we now propose to show.

1st That its jurisdiction and power in land cases is that of a "Court of equity."

2nd Its equitable jurisdiction as a Suit or Cause. commences with filing the transcript of the Board in it, & holds until the final decree on the survey after location is made by it. & patent issues. which alone establishes the "Validity" of a grant and vests a ~~title~~ "legal title in claimant

22. 3rd That when a Court of Equity acquires jurisdiction of a cause it may do complete justice, and 4th That the proceeding in the motion at bar is substantially a Bill of review contains grounds which will reverse the decree, and that appellants have done nothing to prevent the court from now hearing and deciding and allowing the bill.

1st The Dist Court is a "Court of Equity, in Land Cases.
The appeal from the Board is the commencement of a suit in the Dist Court. (See 22 How p.
"The jurisdiction of the Courts of the U.S. depends exclusively on the Constitution and laws of the United States." (See 1 Pet. 511.)
"Congress having the power to establish inferior Courts must as a necessary consequence have the right to define their respective jurisdictions." (See 8 How 448 449. 9th Wheat. 738.)
See 34 Brightleys Digest p. 112

23 provides in part, as to the object in conferring jurisdiction on the Board & Court. It is "for the purpose of ascertaining and settling private land claims in California." Sec 41 The Board and Courts are "to decide on the validity of such claims."

In 21 How. Fossett case p 448-9 "What are the questions involved in the inquiry into the validity of a claim to land? It is obvious that the answer to this question must depend in a great measure upon the state & condition of the evidence. It may ~~involve~~ present questions of the genuineness & authenticity of the title, and whether the evidence (the grant) is forged or fraudulent." &c

"But in addition to these questions upon the validity of the title there may arise questions of extent quantity, location, boundary and legal operation that are essential in determining the validity of the claim." 449.

"It is asserted on the part of

"Appellants that the District Court
"has no means to ascertain the spe=
"cific boundaries of a Confirmed Claim
"and no power to enforce the extent=
"=ion of its decree, and consequently
cannot proceed further in the
"cause than it has done," i.e.
cannot do any thing after decr
=ee rendered. But the Court in
reply say. "The opinion of the
"Court is, that the power of the
"Dist Court over the cause under
"the act of Congress, does not term
"=inate until issue of patent."
No patent can issue until clai=
=m is finally decided.
See Sec 46 p 113 B.L.Dig.t "And all claims
finally confirmed by said Commis
=ion or Dist or Supreme Court a
patent shall issue to the claimant."
Under the above decisions the decr=
=ee of Confirmation is worthless
as a "title" if he fails to invoke
the further equitable powers of
the Court to obtain a patent.
The U.S. Statute of June 1860 respe
cting surveys was passed to regu
=late the practice of the Court in

25. Survey & location of land claims.
In 22 How 226. U.S. vs Pacheco. The Court say "What precise tract of land is to be surveyed and granted to Pacheco's heirs according to the principles of equity must be ascertained in this proceeding (i.e. under the Stat. 1851) to the end that the United States may grant the legal title in satisfaction of the treaty."
again In Fossatt case 449. in speaking of the "validity" of final title. say:
"We affirm that ownership and possession of land of definite boundaries which rightfully attach to the grantee."
Sec 44 B. Dig. p 113 provides that the Boards Courts shall decide in part upon the "principles of Equity" Being required to decide according to the principles of equity, the statute confers the power and imposes the duty upon the Court to administer equitable remedies as distinguished from Common law.
See #3 Pet Parsons vs Bedford p. 446 In speaking of rules of

26. By Commonlaw mentiu in the Constitution, say: "Not Mearly suits which the Common law recognized... but suits in which legal rights were to be ascertained and determined in Contradistinction to those where equitable rights alone were recognized and equitable remedies were administered."

But beside the above authority which show the equitable jurisdiction, complete, we cite 22 How 226 U.S. vs Pacheco. where the whole question is killed by deciding that the "titles" to be decided are equitable, & Concequently only a "Court of Equity." could have jurisdiction. The Court Say "This Court is not dealing with a legal title," None such can exist until there is a Survey, the land reserved from the public domain, and the public title transferred by final grant from the U.S. into private ownership." same page. "And this must be done "according to the principles of Equity." And Concequently, we say according to "Equity practice"

27 In Fossell case p 450. The Court only considers the decree of Confirmation final for the purposes of "Survey & location," and states in terms that it is not a "final decree" under the acts of 1789 & 1803. This is the only practice the Court could adopt, else how could a claimant proceed to locate and set a final decree upon which alone he could obtain a "patent" or "legal title" to the land.

Nor does this view of the case interfere in any wise with the Court in allowing re-hearings or Bills of review.

3rd When a Court of equity assumed jurisdiction it will do complete justice See Eckart vs Robinson 5 Pet 263. 1 Rob. 366. Beardsley vs Hall.

In Wight 249. Miami Exp Co. vs U.S. Bank, Court say. "If any aspect of a case give jurisdiction the Court may hold it for complete justice".

In 4 Ham 175. Olivera vs Perry. Court say "When a Court of equity gains jurisdiction of a cause for one purpose it may retain it for all."

Nor is this a jurisdiction which Claimant can voluntarily decline

28. or avoid. In Fossatt Case p. 448. The Court say "These acts of Congress do not create a voluntary jurisdiction which the Claimant may seek or decline .... This jurisdiction comprehends any species of title or right whether in choate or complete; whether resting "in contract or evidenced by authentic "act and judicial possession".

What constitutes a final decree (See 7 Page 18.) This authority shows a decree not final as long as any thing is to be done by the Court to do complete justice or afford a perfect remedy to the parties. In Lamb Case the Court hold also that a decree of confirmation is not final under the act of 1789.

This is shown clearly the jurisdiction over the subject matter & the claimants, which latter too, is shown by revival of the cause in name of Isaac D. Carr after the five years, in August 1863. This latter act of the party is not claimed as giving jurisdiction to the Court, for this is known before See U.S. vs Gomez p. 337. where the Court say in italics. "The case being still before the Court, we do not perceive any irregularity in the proceedings".

29. But it is conclusive upon the Claim=ant, and subjects him and his claim to the land, to such remedies, rules or practice which a Court of Equity may exercise or subject him.

And this brings us to consider the proposition number,

"4th That the proceeding in the Motion at bar, is substantially a Bill of Review, contains grounds which will reverse the decree, and that assuming these done nothing to prevent the Court from now, hear=ing and deciding and allowing the Bill"

In 3 Daniels, Chancery, Pleading and Practice, p. 1603, Under the head of "General Practice" rules. The text reads

"Where a party feels himself aggrieved by
"a decree or decretal order of the Court
"there are three modes by which he may
"have it either reversed or altered.
"1st by a Re-hearing before the same or anot=
"her judge of the Court.
"2nd By an appeal to the House of
"Lords." (or here to the U.S. Supreme Court)
3rd by a Bill of review."

By this authority and practice

30 a decree of Confirmation of a land
Claim is subject to the chancery pow-
=er & practice of the District Court
to be "reversed" in either of two
proceedings. viz Re=hearing and Bill
of review.

A re-hearing is the proper remedy
& practice <u>before</u> "enrollment" of the
decree. and if granted prevents the
decree from being "enrolled" and
thus superceeds its effect.

A Bill of review, is the proper
remedy & practice, <u>after</u> the decree
is "enrolled", to "reverse" the decree.

In 3 Daniels Ch. Pr Practice p. 1724 the
"text read. "If a party seeks to <u>reverse</u>
"a decree which has been <u>enrolled</u>
"and upon error apparent, or on
"new facts, or facts discovered since
"publication based in the original
"cause he must file a <u>Bill of review</u>"

Chief Baron Gilbert in his Forum
Romanum, defines this bill thus,
"Comparies a bill of review to an
"appeal from the prince pronouncing
"a definitive sentence of the civil
"or canon law, <u>misinformed</u> to the
"prince better informed."

Grounds for Bill of review

In 3 Daniells Ch. Practice p. 1727 the text reads. "There are two grounds for bill of review to reverse a decree.

"1st Error in law apparent on the face of the decree, without further examination of matters of fact. and
"2nd New facts, or facts discovered since the decree, or at least since publication passed in the original cause, and materially pressing upon the decree and which could not possibly have been used at the time when the decree passed."

These "New facts" or "facts discovered" must have been in existence at the time the decree passed. (See Bledso vs Carr 10 Yerger 53.) The court say. "It must be matter which existed was in existence at the time the decree was rendered. but was not known to the party till after."

As to the facts stated in the affidavit of Ord, it shows the original grant was "forged" & fraudulent; a "forged" or "fraudulent" grant can only be shown by inspection of the original grant.

By the practice of the Court, the

32 on appeal to Dist Court, a transcript from the proceedings of the Board, so far as evidence is concerned, is used in part, as evidence on which the Court is to decide and per consignence. the original grant is neither before the Court, nor made necessary to be so in order to render its decision in confirming or rejecting a grant. Hence the fraud, "could not possibly have been used at the when the decree passed." to defeat the grant. Nor until the fraud or "forgery" should come to the knowledge of the U.S., and this is shown by the affidavit of Ord. to not have come to his knowledge until after the decree and by a thorough investigation of the Sonnentum cases. (see affidavit.)

The facts discovered must be "materially pressing" on the "decree."

The facts of forgery of the grant is fully set out by ord and reference to the persons who could prove them, from time to time the cause has been, given continuance and time and leave granted by the Court to obtain affidavits of those persons. (see order continuance Feb 10/57, In June term 1862, In June 1863) The last was by consent of Claimant

33 (See also Stipulation of Counsel for Claimants filed Oct 19th 1863)

Hence the whole of the affidavits and exhibits read & submitted to the Court on this Motion, stand for the consideration of the Court, the same as if they had been perfected as they now are on the 10th day of Feb 1857.

And the question is, are they "pressing" on the "decree" "rationally". We have no doubt that a careful reading and examination of the affidavits and exhibits & photographic copy of the original grant, and also of the genuine Custom House Seal attached to E. S. Williams Affidavit filed Oct 26th 1863; the Court will come to the conclusion that there is no discount on the "pressing" character of the evidence, and in a court of equity where the "Conscience of the judge" must be satisfied, where "fraud" and forgery are within its special jurisdiction, and the "Court cannot look upon fraud with the least allowance", the Court will deem it a pleasure to enforce the benign functions of a Court of equity, allow the bill of review and reverse the decree of Confirmation in this case.

How a bill of review is drawn.

The Bill should be signed by Counsel.

See Daniells Ch Pr Practice p. 1729. The text reads "In a bill of review it is necessary to state the former bill and the proceeding thereon; the decree, and the point in which the party exhibiting the bill of review considers himself aggrieved by it, and the grounds upon which he seeks to impeach; (the decree) and if the decree is impeached on the latter ground (New Matter, see page of this brief 31) it seems necessary to state in the bill the leave obtained to file it, and the fact of discovery." The bill may pray simply that the decree may be reversed and reversed in the point complained of." The bill is filed by Plff Clerk and "Defendant (claimant) served with a Subpoena."

The "Filing the bill of review does not prevent the execution of the decree impeached." (see Daniells Ch Pr Practice p. 1730

A Bill of review thus drawn and filed as above, would be regular and subject to no objection.

It will be perceived that ~~in~~ a bill of review as in all pleadings, on

35 proceedings before a Court embraces both "Matters of Form" and "Substance" The formal parts of such a bill are as follows.

1st It must state the former bill & proceedings

2nd The decree

3rd The leave of the Court to file the bill.

These forms have not been complied with in this case. The proceeding may therefore be said to be informal under strict Chancery practice. But have these formal defects been cured? In the Gomez Case p 337. The Court below says "The proper Motion under his (Quer atty's) Charges ~~terms~~ (charges of fraud in the decree) two terms before) was to ask for leave to file a bill of review." The Supreme Court (see same page) say "We see no irregularity in the proceedings." So the obtaining leave to file the Bill by petition under Chancery practice, has been dispensed with by the Supreme Court and obtaining the bill by Motion has been adopted; This dispences with the ~~practice~~ strict chancery practice to "state the former bill & proceedings" and the "decree." But the Gomez case says the Motion should "ask for leave

to file a bill of review." This has not been done. But the Claimant is in fault & Cannot now object, ~~for~~ that, informality In 1 Bland 125, Carroll vs Parran The Court says "If a bill of review is filed without leave, in a case requiring it, it may be dismissed on motion." The Claimant has made no motion to dismiss, hence this defect is cured, as the remedy to take advantage of the error is by motion, "establishes cases" "filing without leave", unless the Claimant avails himself of his remedy by motion. Thus all objections to the form of the bill & filing it, are removed and it stands as submitted to the court for its consideration on its substance as containing matter necessary for a "bill of review."

Substance of a bill of review.

The substance of a bill of review is as follows. When new matter is relied on.

1st The new matter must be stated upon which the party seeks to impeach the decree.

2nd That the facts discovered existed at the time the decree was rendered.

3rd That they were discovered, or came

against the parties were all in court when the offendant was served (see order 10th)

37. of his remedy by Motion. Thus all objections to the form of the bill & filing it are removed. And it stands as submitted to the Court for its consideration on its substance as containing matter necessary for a "Bill of review" (Substance of a bill of review.) The substance of a bill of review is as follows. Where new matter is set in on.. 1st The new matter must be stated, upon which the party seeks to impeach the decree. 2d That the facts discovered, existed at the time the decree was rendered. 3d That they were discovered or came to the knowledge of the party after the decree was passed, or at least after publication. 4th That the facts discovered are materially pressing on the decree, and if unanswered in point of fact would clearly entitle the Plf to a decree, or would raise a question of so much nicety and difficulty, as to be a fit subject of judgment in the case (See Daniells Ch. Pr. P. 1734). 5th That the party could not have discovered the evidence with reasonable diligence & if produced in time would have supported the original decree.

If a bill of review contains the above matter & substance it is a good bill under chancery practice and demands the consideration of the Court. And it is conceived that this case as submitted to him conforms to the above, it is bound to reverse the decree. We have no doubt the Court will find every essential ingredient in the papers submitted in this matter, which we now style in Chancery practice, a "Bill of review" & decisions of U.S. Court

This bill may be filed within twenty years after a decree has been entered if for newly discovered. See Story Eq. Pl. p 419 If for errors apparent "on the face of the decree," it may be filed any time within five years, after decree. (See 10 Wheat 146.) A decree under the practice of the U.S. Courts is considered, "enrolled" when passed or entered.

In Conclusion.

Claimants theory is, 1st The decree of confirmation is final, 2nd Nothing but an appeal will lie five years having elapsed, and 3rd The court has no jurisdiction of a bill of review.

Appellees theory is, 1st The court has general jurisdiction until patent issued and Claimant cannot escape it. 2nd The District Court in trial of land cases, is a "Court of equity," with power to adopt the practice of such a Court and bind all parties thereby. 3rd The motion before the Court in substance is a bill of review, to reverse the decree & is the proper remedy after "enrolled" decree, and which does not interfere with execution of the decree but is sufficient to reverse it.

We submit the whole respectfully

B. F. Montana
assistant Counsel

assents Counsel

State of California }
County of Monterey } ss

R. F. Hall being duly sworn ~~a copy~~ he says that he served a copy of summons brief on Jesse D. Carr by leaving at his residence in Monterey County a copy thereof with the lady of his house keeper & explaining to him the nature thereof and informing him that said Carr had leave to reply thereto in ten days from this date. This done on the 9th day of November A.D. 1863

Subscribed & Sworn to before me

R. F. Hall

Nov 9/63

U. S. Dist Court
Southern Dist

Jesse D. Carr
appellant
vs
The United States
appellee

Appellees
Brief

Filed Nov. 9, 63
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Clk

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for U. S.

United States District Court
Southern District of California

Jesse D. Carr, substituted for Thomas O. Larkin, who was substituted for Pio Y Lugnantony
Appl^t
— v —
The United States
Resp^t

Appendix to Hoffman's R. p. 105. No. 782. 314.
recites grant by Micheltorena. —
Claim filed March 2. 1853. — Granted Oct 26. 1843. — Rejected by Land Com. April 24. 1855. and confirmed by Dist. Court Feby. 4. 1858. — (In Antkum's Brief — confirmed Feby. 4. 1857.)

On 10th February (said to be same term) motion and affidavit for new hearing filed on the ground of newly discovered evidence. —

This motion presents two questions
I. Has the Court power and jurisdiction to hear and determine the motion?
II. Should the motion be granted on the merits?

V.

The claimant insists that the jurisdiction of this Court over these land claims is a special, limited jurisdiction, and that when judgment is rendered, it has no other power over the case, than to grant an appeal.

§ 43. Brightly's Digest 113. — The District Court shall proceed to render judgment upon the pleadings and evidence in the case * * * and shall upon application of the party against whom judgment is rendered grant an appeal to the S. C. of the U. S. * *.

In Cervantes v U. S. it was held, it must appear that the land was within the District.

16 Howard U. S. R.

Without the statute the Dist. Court certainly had no jurisdiction of these cases then, it being a Court of limited jurisdiction.

Ex parte Bollman 4 Cranch R. 75.

2 Cond 33. The jurisdiction of the courts of the United States is limited and the inferior Courts can exercise it only in cases in which it is conferred by Act

of Congress.

Ex parte Cabrera 1 Wash. C.C.R. 232.
depends exclusively on the laws of the U.S.
1 Brockenbrough C.C.R. 203.

It can only exercise such powers and jurisdiction as the Statute has conferred.

Consent cannot confer
Jurisdiction. Hence post-
poning the motion from
Term to Term by consent cannot prevent the
claimant from raising this question.

On the merits.

The decree was entered after full consideration
The Court was satisfied of the validity
of the claim.
The only new evidence alleged to have
been discovered is the so called Livingston
seal. which, it is claimed, is conclusive
evidence of fraud and forgery.
This evidence, if it is evidence at all,

was in the possession of the Government — in the archives in San Francisco. — and had been from the time Halleck took possession of the Archives in 1846. — 12 years.

See Opinion of Judge Hoffman in U.S. v Francisco Rios for the Rio del Estanislaus

Opinion of Hoffman p. 21. Donnellan & Gould's Brief in McGarahan v Maxwell.

It was also known to the Government before this case was decided.

See Appendix to Land Com. Exhibits in case of U.S. v Limantour, Table, V.

See the case of U.S. v Limantour, 1 Hoffman's R 389. 392. (bottom of p.) Decided June Term 1858.

It does not, as stated by Judge H., show the grant to be for services of Limantour (393.) but to Antonio Chavis. Sealed paper was in existence for the year 1843. in Sonora — prior to the making of this grant, which was in Oct. Hoffman 412 413.

Is this habilitated by Castañeda alone (Hoff. 413) It must have been known to the U. S. Law Agent — long before the decision 1 Hoffman. 417. 418.

(We copy from U.S. v Pico.)

"The evidence of fraud and forgery which "it is now sought to introduce is derived "from the archives of the former Government "These archives have, since the commence"ment of the suit been in the possession "of the U.S. They would at any time, if "carefully examined have afforded irrev"ocable proofs of the true character of "this claim. The fact that the seal ren"ered the Limantour seal is forged was prov"en beyond in November 1857. It was prob"ably discovered sometime previously * * *
"For more than three years and a half, "during which this case was pending be"fore the Board and the District Court "the U.S. have omitted to present testimony "as to the principal point in issue, which "an diligent search could have been ob"tained. No new document has been "discovered nor any new evidence sud"denly brought to light. — a comparison "has merely been made between the "seals on papers and those on others "admitted to be genuine. Of both the "U.S. was from the beginning the ap"pointed custodian Though opposed

"by the opinion of this Court that the case "was open to the gravest suspicions, the "United States have, through their appointed "agents, formally acknowledged the va-"lidity of the claim, and consented that "the decree confirming it should be "treated as final."

Neither Larkin nor Carr had any knowledge of this fraud (if fraud it be); they cannot be accused of concealing anything from the Court. That will not be pretended — they are bona fide purchasers for a valuable consideration.

The case then is a naked case of a party having evidence (documentary) in its possession - with full power and no obstacle to its introduction, - negligently or wilfully omitting to introduce it. This is clear because on 5th Feby the decree was rendered; on 10th " the affidavit was filed.

"An application for a rehearing must usually state some reason which would constitute a good ground for a new trial at common law"

Hunter v Marlboro 2 Woods & Minot 168. (205) cited in 3 Daniels Chy R. (1606)

166 note 2.

Rehearing is a matter of discretion.

1 Wood & Min: R. 23
id. p. 5
1 Laws Practice 500
1 Story 198. 218
Story's Eq. J. 332. & 417.

The application does not comply with the 90th Rule. no 88. Rule. See Rule 1 Woodbury & Minot's R.
See Laws Practice p. 499.

The issue before the decree was — Is the grant genuine or false? This proposed new evidence is only cumulative to the litigated facts, and in such case a rehearing will be denied.
3 John. Ch R. 124 Livingston v Hubbe.

The rule of Lord Bacon as declared in his ordinances No 1 * * * is that a bill of review upon matter of fact, must be upon special leave of the Court, and upon oath of discovery of new matter which hath come to

light after the decree, and could not possibly be had or used at the time when the decree passed" Cited by Chancellor Kent 3 John. Chy. 125.

"If the party might have used the new proof when the decree was made "it is not a sufficient ground for a bill "of review" * * "There is no newly dis-"covered evidence in this case but what might "have been had with ordinary diligence "in the first instance"

The matter must not only be new, but it must be such as the party, by the use of reasonable diligence, could not have known; for if there be any laches or negligence in this respect, that destroys the title to relief. Story. Eq. R. § 1414.

In Baker v Whiting, 1 Sumner R 233 — Joseph Story said:- "The questions then properly before the Court are, first, whether the defendant Whiting had knowledge or could by reasonable enquiry and diligence have acquired knowledge of the facts stated in Cooper's deposition before the publication of the evidence, or before the hearing which was a year afterward, so that he might have availed himself of it be-

for the decree. If he had such knowledge, or could by reasonable enquiry and diligence have obtained it, then it is clear, upon the authorities that he is not now entitled to any relief" citing

Young v Keighly 16 Vesey 348
Partridge v Usborne 5 Russell 195.

In Bingham v Dawson (Jacob R. 243) leave to file a bill of this nature was refused, when the party might have obtained information of the facts previous to the making of the decree, if proper diligence had been used." cited by the Chancellor Pendleton v Fay 3 Paige R 207. see the case reported 4 Eng. Chy. R. — in which case the evidence sought to be introduced after decree by bill of review (rehearing) consisted of records kept in a public office (Augmentation office) and the Court said —

"If search had been made there "would have been a proper defence." It "is to be laid down, that a party may go "on to a decree without looking for a de-"fence, and may then make applications "of this kind, there will never be an end "to them. It is not a case of search

"made, and a miscarriage at that search.
"but it does not appear that there was any
"search at all."

In Nevison v Stables (4 Russell 212-4 Eng. Chy. R. 213) the Court said — If a party desires to impeach a decree on the ground of facts not appearing on the pleadings, he can only do so by a bill of review or bill in the nature of a bill of review, such a bill he cannot file without leave obtained from the Court, and such leave is never given, unless he satisfies the court, not only of the materiality of the new facts which he desires to introduce into the cause, but that he could not with reasonable diligence have availed himself of them before the decree was made.

Hoffman's Chy P. vol I. 569

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"The question always is not what the plff. (in a bill of review) knew, but what, using reasonable diligence, he might have known." In note 1 to p. 568 Hoffman's Ch. P. citing Gartside v Isherwood Dickens. — "The court requires to be satisfied that the matter alleged as newly discovered was not at the time

of the hearing in the knowledge of the party or his solicitor or agent * * but the defendant not being able to show that he was not apprized of the matters at the time of the decree, the petition was dismissed

Under Rule 88 Law & Practice 499

Rule LXXXVIII

"Every petition for a rehearing shall contain the special matter or cause, on which "such rehearing is applied for, shall "be signed by counsel, and the facts "therein stated, if not apparent on the "record, shall be verified by the oath of the "party, or by some other person. No re-"hearing shall be granted after the term "at which the final decree of the court "shall have been entered and recorded, "if an appeal lies to the Supreme Court. "But if no appeal lies, the petition may "be admitted at any time before the end "of the next term of the court, in the dis-"cretion of the court."

This rule was adopted at the January Term 1842 S. Coffell's. In May 1845 the case of Jenkins v Eldredge 3 Story R 311.

was decided. (We quote from p. 314-316.)

"In the next place, leave is never given to "file a supplemental bill, in order to admit "new evidence, after an interlocutory decree, "where the party might, by due diligence, have "introduced it originally into the cause, or "had full and ample means of knowledge "of it within his reach. It matters not, "that he, or his solicitor or counsel, did not "understand the true value or importance "of it if they knew the facts, or had ample means of knowledge, and a fortiori, "if, by the very nature and character of "the matters put in issue, they were bound "to search, and to make full and perfect "inquiries. The authorities are very numerous "and pointed to this effect. But it will be sufficient, upon such a subject, to refer to a few "leading authorities. In Young v Keighley (16 "Ves. 348, 353.) Lord Eldon said, that in cases "of this sort, the question always is, not what "the plaintiff knew, but what, using reasonable "diligence, he might have known. Norris v Le "Neve (3 Atk. R. 26.) Whitlocke v Baker (13 Ves. 511) "Brigham v Dawson (Jacob R. 243.) Barrington v "O'Brien, (2 Ball. and Beatt. R. 440) and Blake "v Foster (2 Ball & Beatt. 457. 461.) are to the "same effect. Mr Chancellor Kent fully

"recognized the same doctrine in Wiser v Blachley
"(2 John. Chy R. 488.) and Hammersley v Lambert
"(2 John Chy R. 432.436.); and in Livingston v Hubbs
"(3 John. Chy R. 124.125.) the same learned Judge
"said (which is very pointed to the present case)
"The defendants was charged in the bill with
"gross misrepresentations in that point, and
"the charge was denied in the answer and
"put at issue. The defendant's attention
"was called to the very point, and he was
"bound to use reasonable diligence in bringing
"forward his proof in that point. In Dexter v
"Arnold, (5 Mason R. 303. 312.) the authorities
"were much considered, and the like conclusion
"was adopted — and it was followed out in
"the analogous case of taking new evidence after
"publication of the testimony, in Wood v Mann
"(2 Sumner R. 316.) There is also, in the case
"of Respass v Canahan (Hardin R. 342, 346)
"which has been already referred to, another
"highly important remark, illustrative of the
"doctrine just stated. The Court there
"said: "We will add, that there is an
"important difference between the discovery
"of a matter or fact itself, which though
"it existed at the former hearing, was not
"then known to the party to exist, or which

"was not alleged, or put in issue by either
"party, and the discovery of new witnesses or
"proof of a matter of fact, which was then
"known or in issue. In the former case
"the party, not knowing the fact, and it not
"being particularly in issue, there was
"nothing to put him in the reach, either of
"the fact or the evidence of the fact; and,
"therefore, the presumption is in his favor,
"that as the matter made for him, his
"failure to show the matter was not
"owing to his negligence or fault. But
"where the matter was known, or put
"in issue, the party is put upon the
"investigation and the presumption is
"strong, that by using due diligence, he
"might have shown the truth of the mat-
"ter on the former hearing".

"These are some of the principles
"which I have thought it right to bring
"under review, upon the present occasion,
"with reference to the point, now under
"consideration, as to the general nature
"and object of the new evidence".

In the case at bar, the fact in issue
was the genuineness of the grant. If
the government seal was simulated

that was a part of the evidence to show the grant was not genuine. The U. S. had in the archives of the Land Com. the grant or paper now claimed to have such counterfeited seal upon it, with full opportunity of inspection and examination, and of comparing this with the other grants said to have a similar seal, and also with those conceded to be genuine.

Some of the cases before cited arose upon application for leave to file a bill of review to set aside a decree. But there is no difference in the rule or principles applicable to a motion for a rehearing, and for leave to file a supplemental bill for a rehearing.

Jenkins v Eldredge 3 Story 305.

Daniel's Chy. Prac. 1671. (1695) vol. 3 Sec. 11. treats the applications as similar, and treats them both as one subject.

"Where a "party has had it in his power to ascertain "the importance of testimony before the "hearing of his case, and has neglected "to do so and to obtain the testimony, "a court of equity will not grant a re-

"hearing of the case on the ground that the im-
"portance of the Evidence had been ascertained
"after the decision".

Provost v Gratz, 1 Peter's C.C.R. 365, 379,
(Copy p. 379.) "Defts applied for a rehearing
"upon the ground of after discovered evidence.
"The affidavit stated that since the decree,
"the defendants upon examining the papers
"in their possession, were led to conclude
"that a Mr S * * might know something
"in relation to the T— lands, in consequence
"of which they had obtained his affidavit.
"Washington J. I feel the strongest disposition
"to grant this motion * * But I should
"deviate so far from well established rules,
"and should open the door to such glaring
"inconveniences, that I dare not indulge in
"this inclination. The means whence this
"information was obtained, leading to this
"newly discovered evidence, have been in the
"possession of the defts, from the time when
"this suit was instituted; and their not
"obtaining the evidence in time for the
"hearing, arose from the inattention or
"misjudgment of the defendants, neither
"of which is sufficient to entitle the
"party to a rehearing."

Taking the case of Hunter v Marlboro. 2 Wood & Minot (before cited as the starting point) viz. that a rehearing will not be granted at common law, for newly discovered evidence, and we find the rule clearly stated in the 4th Division § 193 Cal. Practice Act.

"4th Newly discovered evidence material for "the party making the application which he "could not with reasonable diligence have "discovered and produced at the trial," and "the following adjudications are in point.

"A new trial will not be granted if "such evidence was within reach, and by "ordinary diligence might have been "produced"

Perry v Metzler 7 Cal. R. 418.

People v Marks 10 How. PR 261.

"A new trial will not be granted on the ground of newly discovered evidence which is alleged to be a deed recorded in the Co Recorder's Office a year before the trial, and the record of a judgment in the same Court, in which the cause was tried.

Weimer v Lowry 11 Cal. 104.

A party must be wholly free from negligence in preparing for the trial

to entitle him to a new trial for newly discovered evidence." Leary v Roberts 8 Abbott. 310.

Graham on New Trials (vol I 471. 472) sums up the rule. — "The party applying on the ground of newly discovered evidence, must make his vigilance apparent; for if it is left even doubtful that he knew of the evidence or that he might, but for negligence have known and produced it, he will not succeed in his application" — &c

III.

There is no certainty that the document found by Wheeler in his office is the grant presented for confirmation.

There are no marks upon it to identify it. It has no endorsement of filing in the Land Commission Exhibits. It is not traced from the Surveyor General's custody to Wheeler's possession.

IV.

There is no compliance with the 88th Rule. No petition for a rehearing, nor for leave to file a bill of review.

Eldredge v Jenkins 3 Story R.

3 Daniel Chy P. 1678. (1622) 1679

Besides the decree was entered and

it can only be reviewed by Bill of Review.
which in U.S. v Rico Judge Hoffman held
the D.C. in Land Cases had no authority
to grant leave to file.
3 Daniel Chy P. 1678. 1679.

June 6/64

No. 314

U. S. Dist. Court
Southern District of
California

Jesse D. Carr appl't
— v —
U. S. Resp't

Appellant's Brief

Filed June 6th 1864
John S. Wheeler
Clk

United States District Court } June term 1864
Southern Dist.

Jesse D. Carr appellant
v.s.
The United States. appellee } June 6th & 7th 1864

Memorandum
of Authorities read by B. F. Ashley
for appellant. on re-argument
of the Case, ordered at December term
1863.

1st The U.S. Government deals with Land
Grants under the act of 3rd March
1851. Creating the board of Land Com-
-mission to settle private Land Grants
in California, by Congress; Not as a
litigant, as between parties. But
as a Sovereign Power to do justice
to, and Confirm the title to grants
derived by Claimants from the
Spanish and Mexican Governments.
under treaty Stipulations, and the
Government are only bound to recog-
-ize or Confirm any but bona fide
Grants or titles.
See 19th Howard R. p 365

Cons Say:

"But the United States have bound themselves by a treaty to acknowledge and protect all bona fide titles granted by the previous Government; and this Court have no discretion to enlarge or curtail such grants, to suit our own sense of propriety or defect of just claims, however extensive."

Where a title was confirmed by the Board of Land Commission, and affirmed by the U.S. District Court and on appeal, the bona fides of the Grant was suspicioned by the Supreme Court, and instead of rejecting the title, the Court sent the case back to District Court to enable the Claimant, if he could by further evidence to remove the suspicion.

See 20 How 64-65.

These two authorities over rules fully the Hoffmans view in U.S. vs Rico cited by Mr Patterson in his brief filed Dec 67864, and shows Claimant Case out of the purview of the protection of act 3rd March 1851 afresaid

upon the admission of his Attorney Mr Patterson in open Court that the original Grant in this Case was forged & fraudulent.

3d The Jurisdiction of this Court over land grants and over the persons of Claimants, generally, is conferred by the act of 3d March 1851 aforesaid and whether it be special or general as to its general Jurisdiction, can in no sense in law or equity affect, nor does it pretend to regulate the practice, or make, rules for the practice of the Dist Courts.
See the act 3d March 1851.

4th The position of Claimants Atty that the Dist Court has only power, to hear additional proof; decide the Case; and grant an appeal to the Supreme Court, Still does not effect or bar the District Court in using or making any such rules of practice in these land Cases, which ~~they~~ it may judge will enable ~~them~~ it to carry out the objects of the treaty & act of 1851—

aforesaid. But to the Contrary, the Supreme Court hold and have settled the doctrine and practice of the District Court, making it the duty of the Court to judge of the proceedings before it & jurisdiction to dispose of the rights of Claimant, & also to make and suspend their rules when "the peculiar circumstances of the case may avoid an act of injustice."

See 23 How 337-8 The Court on speaking of the Motion for re-hearing & Judge Ogier's decision that a Bill of review was the proper Motion to reach the decree, entered, & of the power of the Court over an appeal & the proceedings before it, say, — "The Case being still before the Court (in italics) for do not perceive any irregularity in the proceedings. Besides the Motion for granting the appeal, the Court had "jurisdiction of the Cause to determine what proceedings the Claimant was entitled to under the circumstances of the Case, to get the benefit of the decree, by Survey, or otherwise".

Same Case, p. 339-40 In affirmance of the above Jurisdiction the Court lays down the practice and extend

the Jurisdiction of the Court below in strong language, as follows.

"A Motion to docket and dismiss a cause from the failure of the appellant to file the record within the time required by the rule of this Court, when granted, is not an affirmance of the judgment of the Court below. It remits the case to the Court to have proceedings to carry that judgment into effect if in the condition of the case there is nothing to prevent it. That (the condition of the case, and what is or can prevent it) is for the consideration of the judge in the Court below, with which (condition & what is to prevent carrying judgment into effect) this Court has nothing to do, unless his denial of such motion gives to the party concerned a right to the writ of 'Mandamus'."

This authority makes the District Court the sole judge of what proceedings will or should be adopted, to carry the decree of confirmation in "effect" by survey or what should or could "prevent it."

In case at bar, the Court, on application of Dist Atty, in open court, interposed the pending motion, to prevent the decree from

from going into "effect" upon the ground that the original grant was forged & fraudulent, which fact is not only now admitted by Claimants atty but fully proven by affidavits & exhibits, without objection as to their contents or in part by stipulation of Claimants Counsel.

5 The Dist Courts make their own rules subject to Supreme Court rules.
See 2 Black 509.
There is no rule now adopted by the U. S Supreme Court, on the subject of practice in Dist Courts on writs of error or certiorari.
See 21 How R 5. & after.

6 Mr Patterson claims that our State practice & that of New York is applicable to case at bar. This is not so. See 2 Black U.S.R. p 509. Court says. "In all these respects, (Mattery rules as above) they are unaffected by State legislation". See also authorities cited, 13 How 270. 6 Peters 688. and 3 Wheat 323.
Hence all authorities of Mr Patterson on this point are not in point in the case at bar.

7th Mr Patterson in his authorities seems

7th Mr Patterson, in his authorities seems to confound the jurisdiction & practice of a Court, & has read some authorities which apply to jurisdiction only, & seeks to apply them to the practice of the Court. In 1 Black U.S. Rep. p. 526 will be found a distinction. The Court say, "But there is a wide difference between the power of the Court upon a question of jurisdiction and its authority over its mode of proceeding and process... and has no relation to the question of jurisdiction."
Hence those authorities are not in point.

8 The District Court under peculiar circumstances may modify or suspend their rules in land cases—
See 22 How 292. The Court say. "It must be admitted, that as to the matter of filing papers and the entry of rules under the practice of the Court, such modifications may be made as may facilitate the progress of the Court and the convenience of parties; and, indeed, the Court may, under peculiar circumstances, avoid an act of injustice by the suspension of of its rules." ~~Where however.~~

Thus the Court is directed to the precise point which authorizes it to suspe=nd its rules, i.e. "under peculiar Circum=stances (to) avoid an act of injustice".

There are peculiar Circumstances in this case as bear. Claimants Counsel alledges, 1st The Court has no jurisdiction to interfere with the decree passed, in any form, but (in time) to grant an appeal. 2nd The proceedings under the pending Mot=ion are not formerly drawn up.

3rd The Gov does not show that the forgery was discovered after the decree was entered.

4th The Gov might have known it before if they had looked.

5th Because they did not discover it before but did five days after, the forgery of the grant is de jure, and always was a bona fides title derived from Mexico, protected by the treaty, and if patented by the Gov, forever bars third persons under Act of 3rd March 1851 from questioning its original and pristine genuinesse. For otherwise like all forgeries it should be considered void; as fraud vitiates, and Equity cannot look upon it with the least allowence.

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Which on the part of the United States it

While on the part of the United States it is Claimed that, they are only bound by the Treaty, to confirm recognize and patent Bona fide titles from Mexico in the Mode prescribed by the Government by its Political, Judicial & executive powers.

And also that the District Court has exclusive "Jurisdiction, of the Cause (after entery of Decree of Confirmation) to determine what proceedings the Claimant was (or is) entitled to under the Circumstances of the Case to get the benefit of his decree (so entered) by Survey & otherwise."

"If in the Condition of the Case there is nothing to prevent it."

And further that this Court may suspend its own rules and of its own the rules or Practice of other Courts (exp U.S.S.C) to avoid an act of Injustice & it would be unjust, illegal and inequitable to confirm a grant asserted by Claimant to be a forgery & fraudulent, which the evidence manifes-

9 Mr Patterson, holds the Government responsible, and estoped from

Setting aside the decree entered because its agents did not discover the forgery prior to the decree or trial.

The Supreme Court holds that admissions of its attys against the government "Cannot effect the United States".

If this be true why should an omission (if one at be) to discover the forgery "effect the United States"

This authority shows that the Supreme Court holds that these Land Cases are not subject to the rules of practice, technically as between individuals, but to the contrary the sole object is to ascertain the bona fides & genuineness of the title, i.e. the original papers, any time during the jurisdiction of the Court over the proceedings necessary to carry out the decree.

10 Carr Claimant, is not a bonafide purchaser of the land. He bought with notice of the forgery & for a consideration of 10¢ for 44,400 acres of land and is entitled to no consideration.

Mr Pattison technical objections

to the Appellants of Ord. as not being granted by leave of the Court, are cured, by Claimants failure to move the Court to dismiss for that reason. See 1 Bland. 125.

which decides, if a Bill of review be filed without leave, the opposing Party may move to dismiss, if he do not he is estopped.

11 To dispose ~~the position~~ of the position of Counsel that this Court cannot use or adopt any practice except what are given by Act of 3 March 1831.

See Cole, 21 How 262 where it is held that as that law does not fix a time within which appeal may be taken, they will go to other practice, for a rule.

R. T. Merry
Assistant Atty for U.S.

June 7/64

U.S. Dist Court
Southern District

Lee D. Carr appellant

vs

The United States
appellees

Memorandum of
Points
and authorities for
appellee

Filed June 7/64
John D. Rhea
Clk

B. C. Whitney Dist Atty
and B. F. Williams
Assistant Cons for U.S.

Rec'd from Jno. O. Wheeler
Clerk U. S. District Court for
the Southern District of California
Five hundred dollars in Legal Tender
Notes, less charges of Clerk of said
District Court the same being amount
deposited in said District Court by
J. D. Carr Agent for survey of Rancho
Cienega del Gabilan.

U. S. Surv. Genl. Office,
San Francisco, Cal.
April 24 1866.

[redacted]

Upson
U. S. Surv. Genl.

314

Apr 30/66

475 # bal. Rent of Monday
Apl 30. 66

United States of America, } SS.
SOUTHERN DISTRICT OF CALIFORNIA.

THE PRESIDENT OF THE UNITED STATES,

TO

P. Ord U. S. Dist Atty

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GREETING:

TAKE NOTICE, That ~~a~~ Petition, a copy of which is herewith served upon you, has been filed against ~~you, and each of you,~~ the United States in the District Court of the United States, in and for the Southern District of California, on the 21st day of February in the year of our Lord, one thousand eight hundred and fifty-seven, at the City and County of Los Angeles, in said District, by

Thomas O Larkin praying said Court to review the decision of the United States Land Commissioners ~~of the~~ rejecting his claim to the tract of land known by the name of Cienega del Gurlan in the County of Monterey

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.

In witness whereof, I have hereunto set my hand, and affixed the Seal of the said Court, this 18th day of March, in the year of our Lord, one thousand eight hundred and fifty-seven, at Los Angeles aforesaid.

C Ellis **Clerk.**

J H Coleman
Dep

Mch 18/57

No 314

Marshal's fees
For serving petition $2.00
" Summons 2.00
copying " 50

UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF CALIFORNIA,
U. S. DISTRICT COURT.

Thomas O Larkin

Vs.

The United States

SUMMONS.

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I served this Summons, along with the proper copy of the Petition, upon C. E. Thorn acting District Attorney for U. S.
at Los Angeles, in the Southern District of California, on the 11 day of August, A. D. 1857. Monday
Sworn to and subscribed before me, 12 August 1857
E. Shaw Clerk.
Jno McCracken Jr. Deputy Marshal.

This Indenture made and entered into this twentieth day of March in the year Eighteen Hundred and Sixty by and between Rachel Larkin as Executrix and Frederic H Larkin as Executor of the Estate of Thomas O. Larkin deceased of the first part and Jesse D Carr of the County of Santa Cruz and State of California of the second part, Witnesseth. That the parties of the first part by virtue of the power contained in the Will of the said Thomas O. Larkin. and of an act of the Legislature of the State of California. entitled "An act to authorize the Executors of Thomas O. Larkin deceased to sell and convey certain real Estate" approved April 2nd 1859. and in consideration of the sum of Ten Dollars. to them in hand paid. at or before the ensealing and delivery of these presents. the receipt whereof is hereby acknowledged. do hereby remise release and forever quit claim unto the said Carr all the right. title and interest which the said Thomas O Larkin had during his life time. or which we as Executrix and Executor now have in and to the following described tract of land situated in the County of Monterey and State of California and near the Ex-Mission of San Juan. and known and called "Sienega del Gabilan" containing Eleven leagues of land more or less: being the same tract of land granted and conveyed by the Mexican Government to Jose A Chavis. and bounded on the North by the

Rancho of the late Joaquin Gomez and the Rancho of the late Nicolas Butron of said County. To have and to hold all and singular the above mentioned and described premises together with the appurtenances unto the said party of the second part, his heirs and assigns forever.

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In Witness Whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

Signed sealed and delivered
in presence of

Rachel Larkin (Seal)
Executrix
Frederic H Larkin
Executor (Seal)

State of California
City and County of San Francisco } ss

On this twenty second day of March in the year One thousand eight hundred and sixty before me F. J. Thibault Notary Public in and for said City and County, residing therein duly Commissioned and sworn, personally appeared the within named Rachel Larkin and Frederic H Larkin who are severally personally known to me to be the same persons described in and who executed the foregoing instrument the said Rachel Larkin as Executrix and the said Frederic H Larkin as Executor of the Estate of Thomas O Larkin deceased, and they and

each of them duly acknowledged to me that they executed the said foregoing instrument freely and voluntarily as Executors and Executor of the Estate of Thomas O Larkin deceased and for the uses and purposes therein mentioned

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In Witness Whereof I have hereunto set my hand and affixed my official seal at my office in the City and County of San Francisco and State of California this twenty second day of March in the Year One thousand Eight Hundred and Sixty

Seal

Jos F. Thibault
Notary Public

Rec for Record Dec 26th 1860 at 5. P M and recorded in Book "II" of Conveyances Pages 713 & 714

T. S. Roberts
Recorder Monterey Co

Filed June 10th 1863
John Wheeler Clk

United States of America
So. Dist. California

I John O Wheeler
Clerk of the United States District Court in and for the South Dist. of California do hereby certify the above and foregoing to be a full true and correct copy of the original with its endorsements heretofore on file in the case of Jesse D Carr Substituted for Thomas O Larkin Claimant, against the United States for the place called "El Sabilar" and this day withdrawn from the files thereof in my office by leave of the Court

Monterey June AD 1864

In Witness Whereof I hereunto set my hand and affix the seal of said Court at Monterey this the day of June AD 1864

John O Wheeler
Clk. U.S. Dist. Ct. So. Dist. Cal.

Filed 20/63

No 314
U. S. Dist. Court
So. Dist. Cal.

Jesse D Carr sub for
T O Larkin
vs
United States

Certd Copy Decl

Filed in place of original

J O Wheeler

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State of California
Territory ~~of Nevada~~ } ss
County of Mono

Columbus Sims being duly sworn upon his oath says that in the month of February A.D. 1858, previous thereto, and afterwards, he was the Clerk of the District Court of the United States for the Southern District of California, and that as such Clerk he at that time personally performed the various duties of his office such as filing papers making entries in the records &c.

Affiant further says he has now before him and he attaches hereto and makes a part of this affidavit a certified copy of an entry made in case 314 in said Court on the 10th day of February A.D. 1858. Also a certified copy of an affidavit of J. Ord made in same case and sworn to and filed on the same day.

Affiant further says he has no recollection of any formal motion for a new trial being filed in said cause on said day or at any other time, nor does he believe that any such was filed, but that the affidavit aforesaid was intended as a motion for a new trial, and

was looked upon and considered as such by said Court.

Affiant further states that during the time he was Clerk as aforesaid, the practice of the aforesaid Court was extremely loose and liberal, and that the same formalities and technicalities were not used and required therein as in the State Courts. And further affiant saith not. Affiant further says that he is not positive whether or not a formal motion was filed in the above Case or not. That some times Motions ~~Came to and Considered Upon on this day of August A.D. 1863.~~ would be filed in one Case and incorporate orders by this Number on the docket for the same purpose as if originally filed in each Case by its title

R. W. Nelson
County Clerk
Mono County
Cal.

C Sims

Affidavit of Sims