CASE No. 318

CASE No.
318
SOUTHERN DISTRICT

MISSION OF SAN BUENAVENTURA GRANT

MANUEL ANTONIA
RODRIGUEZ DE POLI
CLAIMANT

LAND CASE 318 SD pgs. 138

TRANSCRIPT

OF THE

PROCEEDINGS

IN CASE

NO. 479

Manuel Antonio Rodriguez de Poli — CLAIMANT

VS.

THE UNITED STATES, DEFENDANT,

FOR THE PLACE NAMED

"Mission of San Buenaventura."

1

318 SD
PAGE 2

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* eleventh day of November, *Anno Domini One Thousand Eight Hundred and Fifty-*two, *before the Commissioners to ascertain and settle the Private Land Claims in the State of California, sitting as a Board in the City of San Francisco, in the State aforesaid, in the United States of America, the following Proceedings were had, to wit;*

The Petition of Manuel Antonio Rodriguez de Poli *for the Place named* "Mission of San Buenaventura," *was presented, and ordered to be filed and docketed with No.* 479 *and is as follows, to wit;*

(Vide page 3 *of this Transcript.)*

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

Los Angeles November 11, 1852.

In Case No. 479, Manuel Antonio Rodriguez de Poli, for the place named "Mission of San Buenaventura", the deposition of Pio Pico, a witness in behalf of the claimant, taken before Commissioner Hiland Hall, with documents marked A. A. Nos. 1 & 2, and translations thereof, annexed thereto, was filed:

(Vide page 4 of this Transcript.)

San Francisco November 28, 1854

Case No. 479 was ordered to be placed at the foot of the 3d Class Cases on the Trial Docket.

San Francisco December 26, 1854.

Case No. 479 was submitted under the rule of March 21, 1854.

2

San Francisco May 15, 1855.

In the same case Commissioner S. B. Farrell delivered the Opinion of the Board confirming the claim:

(Vide page 29 of this Transcript.)

1. And the following Order was made, to wit:

(Vide page 31 of this Transcript.)

3

Petition

318 SD

PAGE 4

To the Board of Commissioners for ascertaining and settling private land claims in the State of California.

Your petitioner Manuel Antonio Rodriguez de Tolé of the County of Santa Barbara in the State of California respectfully represents to Your Honorable Body that he claims a certain Establishment as the Mission of San Buenaventura containing about twelve Square leagues more or less situate in the aforesaid County of Santa Barbara in said State of California that he claims the same in fee by virtue of a sale made by to Jose Arnaz by Pio Pico Constitutional Governor of the Departments of the Californias dated the 8th of June 1846 under an order of the Mixtecan Ecclesiastic dated the 10 day of March 1846 to which said deed of grant marked A and said order marked B are hereto annexed.

Your petitioner further avers that he purchased the aforesaid Mission from said Jose Arnaz on the 29th day of August 1850 as well more fully appear by the deed of ratification marked C hereto annexed.

Your petitioner further avers that the head of the diocese in the County of Santa Barbara, Padre Gonzales has for valuable consideration renounced the provisions made in favor of divine worship in the article 24 of the aforesaid original deed of grant as well more fully appear by said document marked D hereto annexed.

Your petitioner submits the documents referred to in the Spanish language with their Translations and will make further proof of title if required by the Board.

Wherefore Your petitioner prays this Honorable Board to take into consideration

his claim to said tract of land and Establishment called the Mission of San Francisco Buenaventura and decree his Title to be valid and confirm the same.

W. Hubert
Atty for Petitioner.

Filed in Office Nov 11, 1852
(Signed)
Geo Fisher Secy

Deposition of Pio Pico

Los Angeles Nov 11th 1852.

On this day before Hailmer Hall one of the Commissioners for ascertaining and settling private land claims in the State of California came Pio Pico a Witness produced in behalf of the Claimants in the case of the Petition of Mn Antn Rodo de Pole Docket no 179 on the docket of the Commission and was duly sworn

The U. S. Associate Law Agent was notified and attended –

In answer to questions by the Counsel for the Claimants the Witness testified as follows.

My Name is Pio Pico. my age fifty one years and my residence is in the City of Los Angeles. I am a Native of California & have always resided here.

I was actually in the Exercise of the Office of Governor of California from the latter part of the year 1844 to the Month of September 1846 –

In the Month of June 1846 I was Exercising the Office of Governor & Don Manuel Micheltorena discharging the duties of the Office of Secretary ad interim –

[illegible] the [illegible]
a grant from the Government of Mexico

A paper now shown me purporting to be a grant from the government of Mexico made by myself as governor of the Californias to Jose Arnaz, dated the 5th of June 1846 was executed by me in my official capacity at the day it bears date and the signature of Moreno who was then acting as Secretary is his genuine signature – Said paper is hereto attached & marked H. H. No 1.

I made the grant under and by virtue of my authority as governor and for the purpose of providing means to carry on the war then existing between the government of Mexico & the United States.

I had authority to make the grant by virtue of instructions from the Ministry of War & Marine of Mexico bearing date Mexico March 10th 1846. and which I now produce.

It is a paper connected with my official duty and conduct and I desire to retain it in my possession –

I am well acquainted with the laws usages & customs by which the governors of California were governed in the granting of lands and the issuing of titles.

The title paper before mentioned would have confirmed on Jose Arnaz the grantee a good title and valid title to the land therein described if the government of the country had not been changed from that of Mexico to the United States.

The residence of Moreno the former Secretary is in San Diego but he has been absent on a voyage to Mazatlan & I do not know that he has returned.

The sum of twelve thousand dollars mentioned in the grant to Jose Arnaz

was paid to me while I was acting as Governor and it was applied to the public purposes in the defence of the country.

The government of Mexico did not furnish the Government of California any means for defending itself there was no funds in the hands of the local government It was necessary that the Government should procure the means of defence even by extraordinary sacrifices – There being no money at the command of the Governor it was necessary to sell the Mission lands to raise it.

I know of no other means by which the money could have been raised –

The Missions were in a decaying condition & going to ruin –

The local government of California had assumed an authority over them and it had since been the intention of the government to dispose of their lands either by sale or distribution provious to receiving the special authority before mentioned –

The sum of Twelve Thousand dollars for which the property was sold to José Arnaz as before mentioned was considered at the time as a fair price fixed by the government.

Pio Pico.

Sworn & Subscribed
Before me
Hilard Hall Cm.

Filed in Office Nov 11. 1852
Cy Smith
Geo Fisher Secy

Pio Pico Gobernador Constitucional del Departa.

1. 7

Pio Pico Gobernador Constitucional del Departa-
-mento de California.
(Gobierno de California.) Autorizado previamente
por la Exma. Asamblea Departamental para
la enagenacion de las Misiones asi para pagar
las deudas y evitar la total ruina de ellas
como para proporcionar recursos que sirvan á
la defensa comun en el caso de una invasion
estrangera que segun datos fehacientes se halla
muy proxima de merecer en atencion que el Exmo
Señor Don José Arnaz ha hecho al Gobierno
servicios de consideracion y tambien facilitado
buenos auxilios para la mayor conservacion
y seguridad del Departamento bajo la garantia
de justa indemnizacion usando la hacienda
general estubiere desahogada y no teniendo modo
ó forma de cubrir la cantidad que justamente
le adeuda este Gobierno la da en pago de la
que en defenentes epocas ha facilitado al Gobierno
y la que ha recibido presente en total de doce
mil pesos y considerando todo lo que hay que
ver y meditar convino en uso de las facultades
con que me hallo investido por el Supremo
Gobierno y decreto de 13 de Abril ultimo de
la Exma. Asamblea Departamental he venido
en hacer venta real y efectiva enagenacion
perpetua para siempre jamas al expresado
Don José Arnaz de la Mision de San Buen-
-aventura segun y conforme ha convenido con
todas las pertenencias que hay cuenta y reconoce
mesos consistan en terrenos fincas bienes
raices y convenientes en cuyo testimonio y para
la validacion se ponen las condiciones siguientes.

1ª Pagará á los acreedores de la Mision
de San Buenaventura las cuentas que apor-
-tieron justificadas á lomos en el terminos
en el termino de un año.

2ª Desde ahora para siempre facilitará
de su cuenta lo necesario para la subsistencia
y vistuario del Padre Ministro y en todo
tiempo subsistirá alli como igualmente para
la conservacion del culto divino dejando á
beneficio de dicho Padre las fincas que tiene
ocupadas para su habitacion.

A

Deed of Grant.

Doc. No. 16 No 1
auxt to Dpo of
Pio Pico

440

3ª No se podrá alegar lesion enorme por esta venta de parte de ninguna y el exceso en poca ó mucha suma queda a favor del comprador por ser el justo valor que tiene actualmente dicha Mision y no haber quien diere mas por ella.
4ª Se exceptuan de la venta anterior el tiempo y todas sus demas pertenencias que le corresponden.

5º Los terrenos de que se hace mencion y que se reconozcan por de la Mision se comprenden de la Laguna huanemo el palo alto las de siembras de Santa Paula, la Cañada de la Mision y todos lo que no estan concedido por justo titulo y que reconozcan la propiedad del establecimiento de los que se hace venta con todos los bienes raices, y semovientes utiles y demas que sea de su propiedad.

En consecuencia declaro por las presentes letras ser dueño legitimo de la espresada Mision de San Buenaventura de el Señor arriba mencionado en los terminos y bajo las condiciones espresadas por cuyo virtud podrá tomar posesion de ellas de y para la debida constancia en todos tiempos doy este documento como formal escritura que sera reconocida y acatada por todas las autoridades civiles y militares de la Nacion Mejicana en este y en los demas Departamentos y aunque por el Gobierno general de dha autoridad debidamente con su firma y la del Secretario de mi despacho en este papel comun por absoluta falta de sellado ó ocho de Junio de mil ochocientos cuarenta y seis.

Por Dios. José Matias Moreno. Sº Gral.

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

Recorded in the office of the County Recorder of the county of Santa Barbara on this 9th day of October A.D. 1852. at 4½ o'clock P.M. in Vol. 1. of ~~Decimber~~ Deeds and Documents pages 19, 20 and 21. Witness my hand and official seal the day and year above written. Chas. H. Rose. County Recorder.

Filed in Office. Novr. 11th 1852.

Geo. Fisher. Secy.

9

Translation of No. 46 Rot

Pio Pico Constitutional Governor of the Department of the Californias

Previously authorized by the most Excellent Departmental Assembly for the alienation of the Missions also for the payment of the debts and to avoid their total ruin likewise to procure the means that might serve for the common defence in the case of a foreign invasion which according to reliable informations is near happening in consideration of Señor Don José Arnaz having rendered to the government considerable services and also having furnished good means for the best preservation & security of the Department under the guaranty of a fast indemnity when the general Treasury will be disembarrassed & not having the resources to reimburse the amount which is so justly due him by this Government it gives him in payment for the amounts which he has furnished at different times to the aforesaid Government & which it has received and which makes the sum of Twelve Thousand dollars & considering the existing circumstances using of the faculties with which I am invested by the Supreme Government & decree of the Departmental Assembly of the 13th of April last I have sold to the aforesaid José Arnaz in fee the Mission of San Juan Buenaventura as agreed upon with all its appurtenances consisting in lands Estates properties cattle and moveables and in testimony whereof & for the validity of the contract the following conditions are established.

1st. He shall pay the creditors of the Mission of San Juan Buenaventura within the

space of at least one year, the accounts which shall be certified –

2d. From this day he shall furnish on his own account the Sustenance and Clothing of the Father Minister who at all times shall reside there for the Conservation of Divine Service leaving for the benefit of the said Father the rooms which he occupies –

3d. Enormous lesion in this sale shall not be set up by either party and the, and the amount either small or considerable shall be interpreted in favor of the purchaser as being the actual just price of said Mission there being no one that would give more for it –

4th The lands which are here mentioned and which are known as belonging to the Mission include la Laguna, Heneniny & Palo Alto, Los Desimbras de Sta Paula la Canada de la Mission and all those which have not been granted with a good Title from the Government which are recognised as the lands of the Establishment which is hereby sold with all its property Cattle useful & other Moveables which appertain to the same.

In Consequence whereof the aforesaid Señor Arnaz is declared by these presents to be the legitimate owner of the aforesaid Mission of San Buenaventura under the foregoing terms and Conditions –

In Consequence whereof he may take immediate possession of the afore=said Mission in proof whereof I execute this document in due form which shall be ac=

acknowledged and respected by all the Civil and Military authorities of the American Nation in this and other departments and even by the General Government.

Duly authorized under my hand and that of the Secretary of my Office on this ordinary paper for want of Stamped paper this Eighth day of June 1846.

Pio Pico

José Matias Moreno
Secretary Protem.

Entry hereof has been made in the Office in the proper book.

Moreno.

Recorded in the Office of the County Recorder of the County of Santa Barbara on this 4th day of Oct A.D. 1852 at 4½ P.M. in Vol 1 of deeds and documents pages 19 20 & 21.

Witness my hand and Official Seal the day and year above written —

C. E. Huse
County Recorder

Filed in Office Nov 11. 1852.
(Signed) Geo Fisher Secy.

12

3. 13

Ministerio
de
Guerra y Marina.

Seccion de operaciones. E. S.

Principal M. S. Comandte
Gl. de California, digo hoy lo sigte
" los preparativos
que hacen los Estados Unidos, y la aproximacion
de sus fuerzas navales á nuestros puertos no
dejan duda de q. la guerra con aquella potencia
está pr romperse y como el S. S. Presdte Intno. esta
decidido á sostener los derechos de la Nacion
quiere que en todos los puertos de la Republica en
que se presente el enemigo se haga, una defensa
rigorosa y capaz de dar honor y gloria de Par ello
Nacional. Al efecto mientras que el Supremo Gobno
proporciona á V. S. los auxilios convente espera de
su patriotismo y lealtad que dictará las providencias que
juzgue oportunas para la defensa de su Departo con
cuyo objeto queda V. S. que el Sr. Gobr facilitado ampli
amente, y tengo el honor de insertarlo á V. E. para
su conocimiento, esperando que por su parte no perd
ona medio para conservar ellos los derechos de la
Patria.

Dios y Libertad. Mejico. Marzo 10 de 1846.

El Gobor del Departo de California.

Es copia fiel de su original queda en mi poder
y que me remito.

Angeles Setiembre 30 de 1852.

Pio Pico.

I certify the foregoing to be a true and correct copy of the original in possession of the witnesses, which copy I have compared with the original.
Filed in office. Novr 11th 1852.

Geo. Fisher. Sec.

Office of the Board of Land
Commissioners for California.
Angeles September 30th 1852.

Geo. Fisher. Sec

Instructions of the Mexican Government to Pio. Pico. ~~
B.

15

Translation of Document "B"

Ministry of War and Marine.

Section of Principal } Excellency.

To the General Commander of California. I this day communicate as follows.

The preparations which the United States are making and the approach of the Naval forces towards our ports have no doubt that war with that power is about breaking out and as his Excellency the President Protemo is resolved to sustain the rights of the Nation he wishes that in all the ports of the Republic where the Enemy may present itself a vigorous defence be made capable of giving honor and glory to the National flag—

For that object and until the Supreme Government appropriates and sends for the necessary means it rests upon your patriotism and fidelity to dictate the measures which you may judge necessary for the defence of that department for which purpose you and His Excellency are noisted with full powers.

And I have the honor to have it be the same to you for Your Cognisance hoping that you on your part will leave no Efforts to preserve Entire the rights of the Nation—

God & Liberty.

Mexico March 10th 1846.

Tomel.

To His Excellency the Governor of the Department of the California—

16

This is a true Copy of the original which remains in my possession and to which I refer –

Angeles Sept 30th 1852

(Signed)

Pio Pico.

I Certify the foregoing to be a true and correct Translation of the Certified Copy of the original in possession of Pio Pico late Governor of the Department of the California which Copy I have compared with the original –

Office of the Board of Land Commissioners for California –
Angeles Oct 4th 1852.

(Signed)

Geo Fisher
Secy

Filed in Office Nov 11. 1852

(Signed)

Geo Fisher Secy

17

Translation of document "O"

Know all men by these presents that I Jose de Arnaz now residing in the Mission of San Buenaventura County of Santa Barbara and State of California declare in the most solemn manner that it is true and certain that on the 24th day of August A.D. 1844 I sold by and of conveyance to Doctor Don Manuel A Rodriguez de Poli now residing in San Buenaventura County and State afore=said all my right title and actions in and to the Mission of San Buenaventura and all its appurtenances lying and being situate in the County of Santa Barbara for the consideration of Twelve Thousand dollars to me paid by the said Doct Manuel A Rodriguez de Poli the receipt of which is hereby acknowledged and by these presents I again ratify and confirm the said sale of the Mission of San Buenaventura and its appurtenances hereby in the most legal form conveying and conferring unto the said Poli all my title right and actions in the said Mission of San Buenaventura to him his heirs and assigns forever.

And I hereby obligate myself my heirs to protect myself the said Poli in the quiet and peaceful possession of said Mission nor shall my heirs executors or assigns.

In Testimony whereof I have hereunto set my hand and seal in the City of Los Angeles this thirteenth day of November in the year of our Lord one thousand Eight hundred and fifty two.

Jose de Arnaz

State of California
County of Los Angeles } SS

On this thirteenth day of November

18

in the year of our Lord one thousand Eight hundred and fifty two personally appeared before me William S Dryden a Notary Public in and for the County of Los Angeles Jose de Arnas who I know to be the individual described in and who executed the foregoing instrument and acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

In Testimony whereof I have subscribed my name as Notary Public and affixed the seal of my office in the City of Los Angeles the day and date above written —

Seal

W S Dryden
Notary Public

Received the above and foregoing document for Record November the 10th AD 1852 at five minutes past 2½ O Clock P. M.

Recorded the same November 11th AD 1852 at five minutes to ten O Clock AM in Book 1 of Deeds on pages 244 & 245 at the request of Robert Manuel A Rodriguez de Polo.

Wilson M Jones Recorder
pr. H. K. Myles Dept

Filed in Office Nov 11. 1852.
(Signed)
Geo Fisher Secy

2. 19

D.

Agreement between Padre Gonzales and José Amor.

En el puerto de Santa Barbara á los diez y siete dias del mes de Marzo de mil ocho cientos cuarenta y ocho ante mi padre Pedro Carrillo Juez primero de este punto y su demarcacion y por antes mis testigos de asistencia parecieron de presente el Señor D. José de Amor y el prelado Excelentisimo Gobernador de California José de Jesus Gonzales, a quienes doy fé, conozco dijeron: que habiendo celebrado en cuatro de Agosto del año pasado un contrato por el cual el Señor Amor se comprometia a entregar á la Iglesia de S. Buenaventura cual lo hizo en rancho conocido con el nombre de la Laguna constante de dos sitios poco mas ó menos, una viña conocida con el nombre de Santa Gertrudis una huerta de arboles frutales y tapia de pared que esta al frente de la Mision de San Buenaventura veinte y cinco yeguas con su garañon, diez caballos mansos y cien reses, ochenta bacas, diez toros y diez robillos, en pago perpetuo de la condicion segunda de la escritura de compra de dha. Mision, para cuyo cumplimiento este solo lo entrega del ganado que situado en pirio está á disposicion del R. P. y a citada. Declaro que ratifican el espresado contrato y que la cantidad que el Señor Amor ha cedido á la Iglesia es en propiedad de hoy para siempre Jamas, y que ni por si ni los suyos pudiera haber reclamo del ninguna clase y si lo hubiere, cualquiera que sea y bajo de cualquiera pretesto, titulo, voz, causa recurso ó otro cualquiera, bajo el cual lo intenten sean desatendidos en Justicia y como litigante temerario sea condenado, entendiendose lo espuesto referente á las dos partes, la primera por la obvidicion a que está sometida en virtud de escritura y la segunda por el de derecho que le concede la condicion segunda de la escritura citada y declaro que este contrato es y lo otorgan de recipraco interes á las dos partes y que en el no hay fraude, engaño ni lesion: renunciando su propio fuero domicilio y vecindad, las leyes de su favor y defensa con la general del derecho en forma, en cuyo testimonio asi lo otorgaron y firmaron con mugo

20

y los de asistencia segun derecho.
Fr. F. Xavier de Sta Gonzales. Pedro C. Carrillo.
José de Arnaz. ad.a. Vicente Moraga.
ad.a. Juan P. Olivera.

Tomado Conocimiento de este Documento en este Vice Consulado de España.

Cesareo. Lo tachado
V. Consul.

Recorded in this office of the County Recorder of Santa Barbara County, on this 9th day of October A.D. 1853. at 1½ o'clock P. M. in Vol. 1. of Deeds and Documents, pages 22 and 23.

Witness my hand and official seal the day and year above written.
Chas. G. Hess.
County Recorder.

Filed in Office. Nov. 11th 1853.
Geo. Fisher. Sec.

Translation of Document "D"

In the Port of Santa Barbara on the 14th day of the month of March 1845 before me Pablo Carillo first Judge of this place and its Jurisdiction and before my assisting witnesses appeared Don José Arnaz and His Excellency the Governor of the diocese Señor José de Jesus Gonzales whom I recognize and know and who says that having entered into a contract by which the Señor Arnaz bound himself to deliver to the Church of San Buenaventura a Rancho known by the name of the Laguna consisting of two sitios more or less a vineyard known by the name of Sta Gertrudis an Orchard enclosed which is in front of the Mission de San Buenaventura which he has delivered twenty five mares with their stud horse, two tame horses one hundred and Eighty cows ten bulls and ten yearlings in fulfillment of the 2d article of the contract of sale of said Mission for the complete accomplishment of which nothing remains but the delivery of the title which is now at the Pico at the disposition of the aforesaid Reverend Padre.

They declare that they ratify the above mentioned contract and that the property that the Señor Arnaz has transferred to the Church is its property forever and that neither himself nor those standing in his place shall have the right to set up claims of any kind, and if any were to be set up of whatever kind and under any pretext right cause or other motive whatsoever they shall not be listened to judicially and be adjudged as vexatious.

It is understood that the above refers to the two parties to the first one according to the conditions to be observed by him according to his act of purchase

and the Second party according to the rights granted to him under the Second article of the document above referred to, and declare that this Contract is of Equal interest to both parties that there is no fraud deceit nor lesion renouncing their proper Jurisdiction domicil and rights of Nightborhood the laws in their favor and defence and the general law.

In Testimony whereof they thus delivered these presents and signed it with me and the assisting witnesses according to law.

Fr. de Ma Jesus Gonzales.
José de Amos.
Pedro C Carrillo.

Witnys.
Tiburcio Moraga
Juan P Olivera

Cognisance hereof has been taken in the Office of the Vice Consulate of Spain.
Casares Fatadillado
Vice Consul.

Recorded in the Office of the Recorder of Sta Barbara County on this 4th day of October AD 1852 at 4 O Clock PM in Vol 1 of deeds and documents pages 22 and 23 –

Witnys my hand and Official seal the day and year above written.
Chas E Huse
County Recorder.

Filed in Office Nov 11 1852
Signed, Ch Fisher Secy

23

479

Manuel Antonio Rodriguez de Pali
vs
The United States

For the rancho of "Buena Ventura" in the County of Santa Barbara containing about twelve leagues.

Opinion of the Board delivered by Commissioner S. B. Farwell

The petitioner in this case has offered in evidence in support of his claim, a grant issued by Governor Pio Pico, to one José Arnaz, dated the 10th day of March, 1846, and, also, a deed of conveyance from the said Arnaz, dated the 29th day of August 1850, to the petitioner.

The deed from Arnaz is properly authenticated, and to which the appellee's objection and the genuineness of the grant is fully established by Pio Pico, who swears that he executed the same on the day and at the place named in said grant and for the purposes therein expressed.

This case presents for our consideration two important points which have been heard under advisement and not heretofore acted upon, and a determination of which, will settle the fate of a large number of important cases yet undetermined so far as the action of this Board is concerned.

First. The power of the Governor of California under the Mexican authority to sell or grant lands for consideration of money or services and to exceed in amount eleven square leagues

Second. Whether what is termed the mission lands were at the time of the grant aforesaid a species of property subject to grant or sale, by the Governor under the

than existing laws of Mexico

The grant goes on to recite that, Whereas, the government is about to be involved in a war with the American Government, and that he, the Governor, had received instructions in view of the expected coming contest to make all possible preparations to defend the Country in the best possible manner, and that the Government was indebted to the said grantee in the sum of about twelve thousand dollars for services rendered and for money and goods advanced by him and that the Government being without the necessary means of making payment the grant is executed in satisfaction of the claim

Pio Pico states in his deposition that the finances of the Government and of the State, at the time was in an embarrassed state, and that he was compelled to resort to every means in his power to procure funds to prosecute the affairs of State, and that he had special instructions from his government to do so, and was vested with full power on the part of his government to sell the premises in question in furtherance of the objects above stated, and that the sum of about twelve thousand dollars was actually received by him in consideration of the aforesaid grant, and was by him applied to the use of the government in prosecuting the war which immediately ensued

We do not deem it necessary to discuss the subject as to how far a Governor of one of the Departments of

Mexico would be authorized to transcend his ordinary powers under a state of affairs as above recited, as we think the points governing the case settled without it.

In the case of the United States vs Arredondo, et al 6th Peters page 726, the Court say

"In this case clearly evidenced by "the acts, that in considering these claims "by the Tribunals, the authority of the officer "making the grants or other evidence to "the claim to lands, formed no item in the "title it conferred; that the United States "never made that a point in issue between "them, and the claimants to be even "considered much less adjudicated. They "have submitted to the principle which "prevails as to all public grants of land, "or acts of public officers in issuing "warrants, order of survey, permission "to cultivate or improve, as evidence of "inceptive and vacant titles, which is, "that the public acts of public officers "purporting to be exercised in an official "capacity, and by public authority, shall "not be presumed to be assumed, but "a legitimate authority, previously given "or subsequently ratified which is equi-"valent"

And furthermore

"If it was not a legal presumption "that public and responsible officers claiming "and exercising the right of disposing "of the public domain, did it by order "and consent of the government, in whose "name the acts were done, the confusion "and uncertainty of titles and possessions

"would be infinite, even in this country;
"especially in the States whose titles to
"land depend on every description of
"inception, vague and inchoate equities,
"rising in the grade of evidence by various in=
"termediate acts, to a full and legal confirm=
"ation under the great seal."

And again in the same case the Court say

"That the judicial history of the
"land controversies, under the land laws
"of Virginia and North Carolina, as
"construed and acted on within those
"states and in those where the land ceded by those
"States to the United States lie, and Penn=
"sylvania whose land titles are very
"similar in substance, in all which the
"origin of titles is in very vague, inception
"equity; will show the universal rule
"that the acts of public officers in dis=
"posing of public lands, by color or
"claim of public authority, are evidence
"thereof until the contrary appears by the
"showing of those who oppose the title set
"up under it, and deny the power by
"which it is purported to be granted.
"Without the recognition of this principle
"there would be no safety in title papers
"and no security for the enjoyment of
"property under them."

Under the ordinance and regulations of the Mexican Colonization laws the Governor is restricted in quantity to be granted to one man to eleven leagues and it is contended that the Governor had no other power to grant lands except that contained and expressed therein, and

that any grant made outside of these rules, when the lands are granted for consideration and not in reference to the furtherance of the object of said regulations, or when more is granted to one man than eleven leagues, that the Governor had exceeded his powers and the grant made thereby be void.

It cannot be pretended that this grant was issued under the provisions of the colonization law, or with any view of accomplishing thereby any of its objects. But for other and avowed purposes, that of paying and discharging an honest debt due from the government to one of its subjects, and to provide means to defend that country against the imminent attack of a foreign enemy. It does not follow as a matter of course that because the Governor was restricted in granting in the issue of grants under the provisions and regulations of the colonization laws, that he must be under the same restrictions when the grant was issued in pursuance of those rules and regulations; but the legal presumption is otherwise, and that he acted with full authority unless the contrary is shown by the party seeking to avoid the grant, which is not pretended to be done in this case, which position we think is fully sustained by the authorities above cited. And to say that because Mexico had been in a habit of making a free donation of her lands to her citizens but in this instance that because they had themselves imposed the additional hardship on the grantee of paying the sum of twelve thousand dollars

and after receiving the full consideration money, that they now had the right, or that this government has, while standing in her place, to declare this grant void and be too preposterous to be entitled to serious consideration. It would be making a distinction without a reason and acting in violation of every principle of law, justice and equity

This doctrine is also recognized by the Supreme Court in the late case of Fremont vs the United States, although the point was not clearly raised in that case, yet their intimations are such as not leave a doubt as to their opinion if the matter had been fully and fairly before them, in that case they say

"That the words of the grant are "positive and plain, They purport to "convey to him a present and immediate "interest. And the grant was not made "merely to carry out the colonization policy "of the government, but in consideration of "the previous public patriotic services of the "grantee. This inducement is carefully put "forth in the title papers. And although "this cannot be regarded as a money con- "sideration, making the transaction a "purchase from the government, yet it "is an acknowledgement of a just and "equitable claim, and when the grant "is made on that consideration, the title "in a court of equity ought to be as "firm and valid as if it had been pur- "chased with money on the same consideration"

As to the question of right or authority of the Governor to grant the mission land

we have only to quote from the late decision of the said Court in the case of the United States vs Archibald A. Ritchie wherein the Court says: — "There "appears to be no foundation for this "objection", and they refer to the act of the Mexican Congress of the 15th August 1833 and subsequent acts and decrees, and conclude by saying, that, "Under these "laws the authorities empowered to grant "the public lands, have dealt with these "Mission establishments the same as with "any other portion of the public domain; "the clergy who previously had the charge "and control of them being confined simply "to the ecclesiastical and spiritual direction "and government of the Missions."

We think in view of the facts presented in the case and the authorities above recited, that this is a valid claim, and a decree will be entered accordingly.

Filed in office May 15. 1855

(signed)

Geo Parker Fahy

311

479

Manuel Antonio Rodriguez de Pali
vs
The United States

Decree of Confirmation

318 SD
PAGE 29

In this case after hearing the proofs and allegations it is adjudged by the Commission that the claim of the petitioner herein is valid and it is hereby decreed that his application for a confirmation thereof be allowed

The place of which confirmation is hereby given is situated in the county of Santa Barbara and is called the "Rancho of Buena Ventura" and contains about twelve square leagues, Reference being had to the grant and evidence on file for a more complete description

S. Aug Thompson
S. B. Parnell
Commissioners

Filed in Office May 15. 1855

(Signed)

Geo. Fisher Jun

Order

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 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 Thirty one — pages, numbered from 1 to 31, 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. 479 on the Docket of the said Board, wherein

is Manuel Antonio Rodriguez de Peli the Claimant against the United States, for the place known by the name of "Mission of San Buenaventura."

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~~ eightieth.

Geo: Fisher.

Sec.

318

U. S. DISTRICT COURT,

Southern District of California.

No. 318,

THE UNITED STATES,

vs. 318

Manuel Antonio Rodriguez

de Pedr[illegible]

[illegible] San Buenaventura.

TRANSCRIPT OF THE RECORD

FROM THE

BOARD OF U. S. LAND COMMISSIONERS,

In Case No. 479

Filed, Oct 23, 1855.

J. E. Carr

Clk.

318

31

Office of the Attorney General of the United States,

Washington, 3 December 1855.

479 "Mission of San Buenaventura" –
Manuel Antonio Rodriguez de Pole
Claimant

You will please take notice that in the above case, decided by the Commissioners to ascertain and settle private land claims in the State of California in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 20th day of November, 1855, the appeal in the district court of the United States for the Southern district of California will be prosecuted by the United States.

Cushing

Attorney General.

No 318.

1-c

U.S. Dist Court
South Dist Cal.

—— " ——

M. A. Rodrigues de Poli
appellee
vs
The United States
appellants

—— " ——

Notice of Appeal

—— " ——

Filed Feby 12th 1856.

J. E. Carr
Clk

In the matter of the naturalization of Manuel Antonio Rodriguez de Poli } Before the Clerk of the District Court of the 2nd Judicial District State of California, in and for the County of Santa Barbara.

I, Manuel Antonio Rodriguez de Poli a subject of her Catholic Majesty Maria Isabella Queen of Spain and a native of the Province of Asturias in the Kingdom of Spain, of the age of forty nine years having been for four years next preceeding this date a resident of the State of California in the United States of America, do hereby, after having been duly sworn, declare that it is my Bona Fide intention to become a citizen of the United States of America and to renounce forever all allegiance and fidelity to any foreign prince, Potentate, state or Sovereignty whatever and more particularly to Maria Isabella Queen of Spain of whom I am now a subject.

Dated this 27th day of Jany A.D. 1854.

Dr Manuel A Rodriguez De Poli

Sworn to and subscribed before me this 27th day of January A.D. 1854
George D Fisher
Clerk of District Court

State of California } In the District Court
Santa Barbara County } 2d Judicial Dist Jany 14th 1856

I hereby certify that the foregoing is a true copy of the original now on file in my office Witness my hand and the seal of the Dist Court 2d Judicial Dist in and for said County the day and year last above written. George D Fisher Clk

No 318

Manuel A. Rodriguez
de Poli

Naturalization

Filed Feby 12th 1856.

J. E. Carr
Clk.

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

CITY AND COUNTY OF LOS ANGELES--STATE OF CALIFORNIA.

Manuel A. R. de Poli, appellee
vs
The United States, Appellant.

Docket No. 318.

Transcript No. 479.

TO THE HON. ISAAC S. K. OGIER, JUDGE:

The Petition of **Pacificus Ord,** *a resident of said City, County, and State, Attorney of the United States for the Southern District of California, who petitions in this behalf for the United States, and being present here in Court, in the name and behalf of the United States, represents as follows: That heretofore, to wit: on or about the 11th day of November A. D. 1852, Manuel A R. de Poli*

presented a petition to the Commissioners to ascertain and settle the private land claims in the State of California, when sitting as a Board, claiming a tract of land called the Mission of San Buenaventura in the County of Santa Barbara State of California, which said petition is referred to for a description of the land claimed, a copy of which appears in the transcript hereafter referred to. That thereafter, to wit: on or about the 15th day of May A. D 1855, the said Commissioners confirmed, by final decision, the said claim of said petitioner. That thereafter, to wit: on or about the 23d day of October A. D. 1855, a duly certified transcript of the proceedings and decision of the said Commissioners in said cause, and the papers and evidence on which the said decision was founded, was filed in the Office of the Clerk of the District Court of the United States for the Southern District of California, and marked No. 479; reference to which it is prayed may be had and made part of this petition. That on or about the 20th day of November A. D. 1855, the Honorable Caleb Cushing, Attorney-General of the United States, received a duly certified duplicate of said transcript of the proceedings and decision of said Commissioners in said cause, and the papers and

evidence on which said decision was founded. That thereafter, to wit: on about the 12th day of February A. D. 1856, the said Attorney-General of the United States filed, or caused to be filed, in behalf of the United States, a notice with the Clerk of said District Court of the United States, that the appeal in said cause from the said decision of the said Commissioners, in the District Court of the United States for the Southern District of California, would be prosecuted by the United States. Your petitioner further represents, that the land claimed, as aforesaid, is situate in the Southern District of California, and within the jurisdiction of this Honorable Court. Your petitioner further represents and insists, that the said claim is invalid; and the said decision of said Commissioners is erroneous, and ought to be reviewed, reversed and set aside, for many errors and imperfections of law and evidence, apparent in said certified transcript of the proceedings and decisions of said Commissioners in said cause, filed and appealed from as aforesaid. And your petitioner denies all and singular, each and every allegation in the said petition of said claimant, presented as aforesaid to said Commissioners. And your petitioner further denies that the said claimant has any valid right or title to said land claimed as aforesaid, or any part thereof.

And no sufficient proof having been made of the allegations in said petition to said Commissioners, or in support of the said claim, no decision confirming the same should have been made by said Commissioners; but the

said claim should have been rejected by them. And the said claimant, having no valid right or title derived from the Spanish or Mexican Governments, to the land claimed as aforesaid, the lawful right and title in and to the said land was acquired by, and it now belongs to the United States, by virtue of conquest, and the Treaty of peace, friendship, limits and settlement, between the United States and the Republic of Mexico, made at the City of Guadalupe Hidalgo, February 2d, A. D. 1848.

Wherefore, the said **Pacificus Ord,** Attorney of the United States for the Southern District of California, for and in behalf of the United States, by reason of the premises, and in pursuance of the Act of Congress, entitled "An Act to ascertain and settle the Private Land "Claims in the State of California," approved March 3d, A. D. 1851, and the laws and statutes in such case made and provided, prays that the said claimant, or his attorney may be served with a copy of this petition; and that this Honorable Court will review the said decision of said Commissioners, and reverse the same; and decide on the validity of the ~~same~~ said claim, and decree the alleged title to be invalid: with costs and general relief.

P. Ord

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

N. 318.

Filed this 5th January
A.D. 1857 C Sims clk
J. H. Coleman
deputy

No. 3.

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

The President of the United States,

TO

Manuel A R de Poli

318 SD
PAGE 40

Greeting:

Take Notice, That a Petition, a copy of which is herewith served upon you, has been filed against You in the District Court of the United States, in and for the Southern District of California, on the 5 th day of January, 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

P. Ord U S. Atty praying said court to review the decision of the U.S. Land commissioners of the 15 th of May 1855 confirming your claim to the Land called

Mission of San Buenoventura

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

In Witness whereof, I have hereunto set my hand, and affixed the Seal of said Court, at the City of Los Angeles, this 13 th day of January A. D. 1857.

E Jones
J H Coleman
Dep

CLERK.

No. 318

UNITED STATES OF AMERICA,

Southern District of California,

U. S. District Court.

Manuel R de Pola
vs.
The United States

Filed this 13th January 1857
Jesse Ward clk
J. Hollenbeck
Deputy

SUMMONS.

Received January 13th 1857

Edward Hunter
U. S. MARSHAL.

318 SD
PAGE 41

Fr McGoodman
Deputy.

No. 4.

Marshals Costs
Copy of Summons 3.—
Copy of same 3.—
Petition 3.—
$ 6.00

I served this Summons, together with a certified copy of the Petition, upon Myron Norton Atty for appellee by delivering to him a Copy of the same

at Los Angeles in the Southern District of California, on the 13th day of January A. D. 1857.

Sworn to and subscribed before me,

CLERK.

Edward Hunter
U. S. MARSHAL.

Fr McGoodman
Deputy

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

Manuel Antonio Rodriguez de Poli Appellee
vs
The United States Appellant

No 318.
"Mission de San Buenaventura"

318 SD
PAGE 42

And now at this day comes Encarnacion Sanchez de Poli widow and heir of M A Rodriguez de Poli deceased and moves the Court that she be substituted as defendant and appellee in this case in the place and stead of the said M A Rodriguez de Poli deceased.

Encarnacion Sanchez de Poli
by Myron Norton
her atty.

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

Manuel Antonio Rodriguez de Poli — Appellee
vs
The United States
Appellant

No. 318.
"Mission de San Buenaventura"

State of California
Los Angeles County ss.

Antonio Rodriguez of the county of Santa Barbara State of California being duly sworn deposes and says that Manuel Antonio Rodriguez de Poli above named and late a resident of San Buenaventura in the said county of Santa Barbara, departed this life on or about the day of AD 1856.

That said Poli at the time of his death was lawfully married to Encarnacion Sanchez, who became his sole heir, they having no children, and said Poli leaving no other heir to the knowledge of this deponent — And deponent believes that he died intestate.

Sworn & subscribed
Before me this 12th day of Jany 1857.

Antonio Rodriguez

Sworn & Subd. to before
me this 13th day of Jany
A.D. 1857

Geo. Ord

Manuel A Rodriguez de Poli - Appellee
ads
The United States
Appellant

No. 318.
"Mission de San Buenaventura."

On reading and filing the affidavit of Antonio Rodriguez, and on motion of Myron Norton Attorney for the appellee in this case - It is Ordered by the Court, that Encarnacion Sanchez de Poli widow and heir of Manuel Antonio Rodriguez de Poli deceased, be substituted as defendant and appellee in this case, and that all further proceedings in this case be conducted in the name of the said Encarnacion Sanchez de Poli -

No. 318.
U.S. District Court
District of California

Manuel A. Rodriguez de Poli
Appellee
ads
The United States
Appellant

Affidavit to order of substitution

Filed Feby 13th 1857
Geo. Cole

No. 5. 318 SD
PAGE 44
(See Norton Motion for affidavit)

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

Encarnacion Sanchez Poli - Appellee
vs
The United States Appellant

No 318.
"Mission de San Buenaventura"

And now at this day comes the said Appellee by Myron Norton her attorney and for answer to the petition for review filed in this case by the United States District attorney, says:

That her claim to the lands mentioned and described in this case, is good and valid and ought to be confirmed.

Wherefore she prays that this Honorable Court will affirm the said decision of the said Land Commissioners, and decree the claim of the said appellee to be good and valid, and for such other or further and general relief as may seem just and equitable in the premises.

Myron Norton
Atty for appellee

I have served this answer upon P. Ord Esq
U S. Atty by delivering to him personaly
a true Copy of same At Los Angeles
this 14th of January 1857

Edward Hunter
U S Marshal
Per M L Goodman
Deputy

Sworn to & Subscribed
before me this 14th
January AD 1857
C Sims clk
P. I. Hockman
Dep

No 318.
U. S. District Court
District of California

Encarnacion Sepulveda
et al
vs
The United States
Appellees
Appellants
Answer

Filed this 14th January
A D 1857
C Sims clk
P I Hockman
Dep

No 318 SD
PAGE 46

Wm Norton
Atty for appellees

Marshals Ctt
Copy
Library Amer $3.

34

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

The United States Appellants vs M. A. Rodriguez de Bolo Appellee	In D. C. No 318 Mission of San Buenaventura In L. C. No 479.

To the said Appellee or his Attorneys.

You are hereby notified that the above entitled cause will be brought on for hearing, before said District Court, on the first day of the next term thereof, to be holden in the City of Monterey, District aforesaid commencing on the 6th day of June A.D. 1853 or as soon thereafter as the same can be heard.

R Mitchell
U S Dist Atty
Southern Dist California

No 318

7

The United States
appellants
vs
M A Rodriguez de Poli
appellee

Notice of Trial

Received June 2nd 1859
copy of the within
notice

Mason Morton
& Brown
attys for claimant

Filed June 2. 1859
J. Sims. Clerk
per W. W. Nelson. Deputy

No 10

On motion of J R Litchell Esq Atty for the United States and by consent of parties it is ordered that this cause be set down for hearing on the day of April A.D. 1859, and that the parties have leave in the meantime to proceed to take testimony in said cause under the order of this Court

318 SD

PAGE 49

This order to be entered in

318. Bolt, for Mission of San Buenaventura. 23 April

338. Dee for " " Santa Barbara. 25 April

~~365. Bonaventura for " " Santa Ynez. 26 April~~

Continued further

No 318

6

In the Matter of the Estate of

Order

Filed Sept 17th 1888

Geo. W. Clerk

318 SD

PAGE 50

In Probate

Dec 5th 1888

This paper was read and filed in the terms entered by order of Judge Naught

G. L. Price Clerk

In the ~~Circuit~~ District Court of the United States
For the District of California

318 SD
PAGE 51

The United States
Appellants
v.
Manuel Antonio Rodriguez
de Poli, Claimant & Appellee.

And now this day appears E. L. Joald, Esq. of Counsel for the Claimant and Appellee in this cause and Delos Lake Esq District Atty of the United States, and thereupon the said Joald produces the Mandate of the Supreme Court of the United States in said cause, whereby it appears that at the December term of said Court one thousand Eight hundred and sixty Eight, it was ordered, adjudged and decreed by said Court that the decree of the District Court of the United States for the Southern District of California, entered in said cause on the first day of April one thousand Eight hundred and sixty one, be affirmed; and that all orders and proceedings of the said District Court in said cause, subsequent to the said decree of April first one thousand Eight hundred and sixty one be reversed; - and that the said cause be remanded to this Court, and that such

proceedings be had in said cause as according to right and justice and the laws of the United States, ought to be had; and on motion of the said Counsel for claimant and in pursuance of said mandate of the Supreme Court, it is

Ordered, adjudged and decreed that all orders and proceedings of the District Court of the United States for the Southern District of California, in said cause, subsequent to the said decree of said Court, therein entered on the first day of April one thousand eight hundred and sixty one, be and the same are hereby reversed and set aside.

And it is hereby further ordered, adjudged and decreed that a certified Copy of said final decree of April first one thousand Eight hundred & sixty one be furnished to the Surveyor General of the United States for the State of California, to the end that the land confirmed thereby to the claimant may be surveyed as prescribed by the act of Congress, in such case made and provided. Done in open Court, at San Francisco, this ~~[illegible]~~ first day of June 1869.

Ogden Hoffman

Dist Judge

51-A

No: 318 S.D.

U.S. District Court for
the Dist of California

The United States
Appellant
vs
Manuel Antonio
Rodriguez de Poli
Claimant & Appellee

Filed June 1st: AD 1869
Geo C Whitney Clk
By A D Grimwood
D.C.

Entd in Book 1. Judgts & Decrees p: 262.

No. 318.

Stipulation concerning Briefs.
Refer to case No. 338. filed June 16. A.D. 1859.

No # 13

The United States
vs
Manuel Antonio Rodrigues de Poli
claiming the Mission San Buena Ventura

No. 329. 318
District Court of the United States for the Southern District of California.

This cause came on to be heard on appeal from the decision of the United States Board of Land Commissioners to ascertain and settle private land claims in California on a transcript and proceedings of said Board, and the papers and evidence upon which said decision was made, and the further evidence adduced, and counsel for the respective parties having been heard, it is ordered adjudged and decreed that the decision of the said Board be affirmed.

The land of which confirmation is made is situated in the county of Santa Barbara and known as the Mission of San Buena Ventura, and which were known as belonging to the Mission including the Laguna, huerta el Pala Alto los de sombras de Santa Paula, la Canada de la mission, and all those lands which

at the date of the grant in this case had not been granted by the Mexican Government; and were then recognized as lands of the Mission establishment, excepting the orchards, vineyards, churches and buildings belonging to the said mission at the date of the grant, to the extent of eleven leagues within said boundaries and no more —

Dated at Los Angeles April 1st 1861.

Geo. A. Ogier
U S Dist Atty
for the S Dist of California

No ~~339~~ 318

U. S. Dist Court
South Dist of Cal

M. A de Poté

v

U. States

Decree

Filed April 1. 1861
Geo L Mott Clk
By John O Wheeler Dep

UNITED STATES OF AMERICA, ss.

THE PRESIDENT OF THE UNITED STATES OF AMERICA,

To the Honorable the Judges of the District *Court of the United States, for the* Southern *District of* California

Greeting:

Whereas, lately, in the District Court of the United States, for the Southern District of California before you, in a cause between The United States appellants and Manuel Antonio Rodriguez de Poli appellee (No. 318, for "Ex Mission of San Buena Ventura") wherein the decree was rendered in favor of the said appellee.

No. 318

as by the inspection of the transcript of the record _____

_____ of the said District

Court, which was brought into the Supreme Court of the United States, by virtue of an appeal

agreeably to the act of Congress, _____

_____ in such case made and provided, fully and at large appears.

And whereas, in the present term of December in the year of our Lord one thousand eight hundred and sixty three the said cause came on to be heard before the said Supreme Court, on the said transcript of the record, and ~~was argued by counsel: On consideration whereof,~~ on the motion of Mr Gillet of counsel for the appellee with the consent of Mr Attorney General Bates - it is now here ordered, adjudged and decreed by this Court that this cause be and the same is hereby dismissed -

24 March -

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

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

Witness the Honorable Roger B. Taney Chief Justice of said Supreme Court, the first Monday of December in the year of our Lord one thousand eight hundred and sixty three

COSTS OF

Clerk ..... $

Attorney ... $

$

Issued by

L. W. Middleton

Clerk of the Supreme Court of the United States.

No 318

No. 1/2 December Term, 1863.

MANDATE

SUPREME COURT UNITED STATES.

U. States vs. Dr. Pelerat

Filed Aug 15th 1864

John T. Wheeler

Clk

318 SD

PAGE 60

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

The United States
appellants
vs
Manuel Antonio Rodriguez de Polé
Appellee

No 318

In this Case the mandate of the Supreme
Court of the United States of the date
of the first Monday of December
AD 1863 is filed & presented -
And whereas the said Supreme
Court did at its December Term
AD 1863, the said Cause being
then before said Supreme Court pending
on appeal. order adjudge
and decree that the said Cause
be dismissed and command
that such further proceedings
be had therein as according to
right & justice and the laws of the
United States ought to be had
notwithstanding the appeal
to the said Supreme Court -

Now therefore, It is ordered
that the appeal heretofore issued out

& allowed to the Supreme Court in this Case be and the same is hereby dismissed and the Claimant is hereby allowed to proceed under the Decree of this Court, as under a final decree.

Done in open court this 8th day of August A.D. 1864

Fletcher M. Haight
Judge U.S. Dist. Court

No 318 10

U. S. Dist Court
South Dist Cala

M. Ant° de Palé

vs

The United States

Order on Mandate

Filed Aug. 8 1864
John D Wheeler
Clk

318 SD
PAGE 63

U. S. Surv. Genl's Office
San Francisco, Sept. 5th, 1861.

E. L. Gould Esq.
Sir:

Your communication referring to the survey of the lands of the "Ex Mission San Buena Ventura" is now before me. I have carefully examined the records on file in this Office, with relation thereto. — The original grant would appear to govern any segregation made by the United States. — Your title having been declared valid, it would follow that the original grant should be the governing power in the survey as it is only in the original papers that the intent of the former government can be found. In your case it having been conceded by the United States that the original deed of sale was a valid title for which a large sum was acknowledged to have been paid. — It would appear that you are entitled to the land actually set forth in said original document.

From inspection of the vacation of appeal, it appears that the United States Attorney General conceded the title to be valid and consented that the cause be dismissed. The mandate of the U.S. Supreme Court orders "that such further proceedings be had in said cause as according to right and justice, and the laws

64-A

of the United States ought to be had, the said appeal notwithstanding."

Under these circumstances I would prefer that you refer the decree to the U.S. District Court, so that this office can act understandingly in its duties, the Hon: Judge of this District having heretofore reformed decrees, "according to right and justice."—

The survey can then come before the proper tribunal for adjudication.

L. Upson
U.S. Surveyor

No 318

Letter of Surv Genl

Filed Oct. 13, 1864
John O Wheelock Clk

United States District Court Southern District of California

Regular October Term A D 1864

Hon F. M. Haight, Judge,

318 SD
PAGE 66

Maria Ant° Rodriguez de Yorbi
Appellee
vs
The United States
Appellant

No 4 B 18

Now on this day come the ~~Appellee~~ parties, the claimant and successor in interest in person and the United States by B C Whiting U. S. Dist Atty and on motion of Claimants and by Consent of the U. S. Dist Atty, the final order of this Court made and entered on the 8th day of August A D 1864 is hereby set aside.

And it appearing that the Mandate of the Supreme Court of the United States dismissing the appeal taken by the United States from the decree of this Court Confirming the claim of the appellee herein have been filed

It is hereby Ordered adjudged and decreed that the claim of the appellee to the lands known by the name of the lands of the "Mission of San Buenaventura" is good and valid and the same are hereby Confirmed. The lands of which Confirmation is made is situated in the County of Santa Barbara and known as the Mission of

San Buena Ventura and which were known as be-
-longing to the Mission including the Laguna,
buenemo. El Rala Atta Sorde Siembras de Santa
Paula. La Cañada de la Mission. and all
~~those~~ lands which at the date of this grant
in this case had not been granted by the ~~Ex~~
~~Mission~~ Mexican Government and were then
recognized as lands of the Mission Estab-
-lishment. Excepting the orchards vineyards
Churches and buildings. belonging to the said
Mission at the date of the grant. For a
more particular description reference
is hereby made to the original grant on
file among the papers of the U. S
Land Commission and the survey will be
made according thereto ~~not exceeding eleven~~
~~leagues~~ Thus done signed and sealed this the City of
Monterey. Oct. 13. 1864

Fletcher M. Haight
Judge U.S. Dist. Court Dist. Cal.

No 318

U. S. Dist Ct
Dist of Ala

Ma Antonia Rodriguez de Pole
vs
The United States

Final Order upon the
Mandate,

Filed Oct 13 1864
John D Wheeler
Clk

Recorded 318 SD
PAGE 68

U. S. District Court Southern District of California —

The United States
vs
Mad. R. de Rali

No 318 E —

318 SD
PAGE 69

E. L. Goold Esq Attorney for claimant in the above entitled cause; Please take notice that a Motion will be made to the Court, on the 26th day of November instant or as soon thereafter as counsel can be heard at the U. S. Court room in Monterey Southern Dist of California for a new order of appeal in said cause from the final decree of confirmation by the said U. S. Dist Court to the United States Supreme Court

November 12th 1864

B. C. Whiting
U. S. Attorney for
the Southern dist
of California —

I accept service of the above notice and waive copy. — San Francisco Nov. 12, 1864

E L Goold
for claimant

No 318 (2)

The United States
vs
M. A. R. de Roli

Notice of Motion
for new appeal -
Filed Decr 3d 1864
John W. Dwinelle
Clerk
By Robert Haight
Deep

B. C. Whiting U.S.
Dist. Attorney for the
Southern Dist. of
California

R. A. R. de Roli
vs
U. S.

No 318

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

The United States vs Ma A. R. Abeli	For the Place named San Buenaventura no 318

On filing notice admitting service of the same and after hearing B. C. Whiting Esq on the part of the United States and F. Vassault Esq for claimant on a motion for leave to take an appeal in the above cause and it appearing that the appeal heretofore allowed was dismissed with the consent of the Attorney General of the United States and a mandate from the Supreme Court of the United States having been duly filed, It is ordered that the motion be denied with liberty to the United States to renew the same at the next term of this Court upon sufficient cause shown.

This done and signed in Open Court this Thirday of December A.D. 1864

Hetchler M. Haight

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

No 318 — 13

The United States
vs
Ma. A R. de Poli —

Motion for leave to
appeal denied —

Filed Dec. 3d 1864

John D. Wheeler
Clerk
By
Robert Haight Jr Dep

The United States of America &c

M. A. R. de Poli
vs.
The United States

No 318.

To M. A. R. de Poli, the claimant in the above Entitled case and E. L. Godey his Attorney;

You are hereby cited and admonished to be and appear at a U. S. District Court of the Southern District of California to be holden at the U. S. Court room in the City of Monterey on the third Monday of April A.D. 1865, pursuant to an order of said Court made this 6th day of March 1865, to show cause, if any you have, why a new appeal should not be granted to the United States of America from the decree of said Court made and entered on the first day of April A.D. 1861 confirming the claim of plaintiff herein to the place or tract of land called the "Mission of San Buenaventura" in Santa Barbara County in said State, and speedy justice done to

the parties in that behalf-

Witness my hand and seal at Monterey this 6th day of March A.D. 1865

Fletcher M. Haight
Judge U.S. Dist. Court
Southern Dist of California

I John C. Wheler Clerk of the U.S. District Court for the Southern District of California do hereby certify the foregoing to be a full, true, and correct copy of the original citation made as aforesaid and on file in my office-

In witness whereof I have hereunto set my hand and affixed the seal of said Court this 6th day of March A.D. 1865-

John C. Wheler
Clerk U.S. D.C. Cal.

I hereby Acknowledge Service of Within

I. Henry S Barrows
United States Marshal for the Southern
District of California do hereby certify
that I received the within citation
on Saturday March 11th AD 1865
and served a copy of the same on
E. L. Goold Claimants Atty by
leaving at his office in the City and
County of San Francisco the said copy
on the 11th day of March AD 1865

H. S Barrows Marshal
by Robert Heaigh
Dep

No 318 14½

M. A. R. de Pali

vs

The United States

Certified copy of citation

Filed March 14 1865

John A. Wheeler

Clk

By Robt Haight

Dep

to Return

318 SD

PAGE 76

The United States of America &c;

M. A. R. de Poli
vs
The United States
} No 318

To M. A. R. de Poli the claimant in the above entitled case and E. L. Goold Esq his Attorney;

You are hereby cited and admonished to be and appear at a U. S. District Court of the Southern District of California to be holden at the U. S. Court room in the City of Monterey on the third Monday ~~day~~ of April — A.D. 1861, pursuant to an order of said Court made this 6th day of March 1861 — to show cause, if any you have, why a new appeal should not be granted to the United States of America from the decree of said Court made and entered on the first day of April A.D. 1861 confirming the claim of Plaintiff herein to the place or tract of land called the "Mission of San Buenaventura" in Santa Barbara County in said State

and speedy justice done to the parties in that behalf -

Witness my hand and seal at Monterey this 6th day of March 1865

Fletcher M. Haight
Judge U.S. Dist. Court
Southern Dist. of California

I John A. Wheeler Clerk of the U.S. Dist. Court for the Southern District of California, do hereby certify the foregoing to be a full true and correct copy of the original citation made as aforesaid and on file in my office -

In witness whereof I have hereunto set my hand and affixed the seal of said court this 6th day of March A.D. 1865 -

No 318

The United States

vs

Manuel ~~Rodrigues~~
Antonio Rodrigues
de Poli -

Citation -

Filed March 6th 1865
John. O. Wheeler Clk
pr
Robert Height
Dep

District of Columbia
City of Washington } ss.

Before me, the subscriber D. H. Middleton Clerk of the Supreme Court of the United States, personally came T. J. Coffey who being duly sworn saith that he was Assistant Attorney General of the United States during the last term (Dec. Term 1863) of the Supreme Court of the U. S. and as such Officer was concerned in the cases in that Court in which the United States was a party — that he was thus concerned for the U. S. in the case of The United States v. Incarnacion Lanchez de Poli &c. No. 217 Dec. T. 1863 — that that case was dismissed by the Court on motion of the Counsel for the Defendant in Error, de Poli,

for the reason that the appeal taken in the case and prosecuted to the Supreme Court was not taken at the term at which the decree of the District Court was rendered and filed and, the record exhibiting no evidence that a citation or notice of the application for that appeal had been served on DePoli or her counsel, the appeal was not good — that, this reason being a good one for the dismissal of the appeal, the Attorney General, stated, at bar, that he did not think the appeal was valid and consented to its dismissal on that ground — that the Attorney General did not consent to its dismissal for any reason connected with the merits of the case, but was of opinion that this case was one which ought to be reviewed by the Supreme Court of the U. S. and, in

order that the case might be acted on by that Court on its merits, ~~[illegible]~~ unembarrassed by any preliminary question on the validity of the appeal, he consented to the motion for dismissal with the view of directing the District Attorney in California to take a new and valid appeal in the case before the five years allowed therefor, had elapsed — Accordingly, after its dismissal, the Attorney General directed the District Attorney to take a new appeal —

Sworn & subscribed this 19th Jany 1865, before me in open court —

D. W. Middleton
Ct. Supt. Ct. U. S.

N. L. Coffey

No 318 14

M. A. R de Polei
vs
The United States

Affidavit of
T. J. Coffey

Filed March 6 1865

John B Wheeler
Clk
Robt Haight
Deputy

318 SD
PAGE 83

District of Columbia
City of Washington } ss:

Before me the Subscriber D. H. Middleton Clerk of the Supreme Court of the United States, personally came J. J. Coffey, who being duly sworn, saith, that he was assistant Attorney General of the United States during the last term (Dec Term 1863) of the Supreme Court of the United States, and as such Officer was concerned in the cases in that Court in which the United States was a party; that he was thus concerned for the U. S. in the case of the United States vs Encarnacion Sanchez de Polie No 217 Dec Term 1863 That that case was dismissed by the Court on motion of the Counsel for the defendant in Error De Polie, for the reason that the appeal taken in the case, and prosecuted to the Supreme Court was not taken at the term at which the decree of the District Court was rendered and filed, and the record ~~Exhibiting~~ no Evidence that a citation or notice of the application for that appeal had been served on De Polie or her

Counsel, the appeal was not good - that this reason being a good one for the dismissal of the appeal, the Attorney General stated at bar, that he did not think the appeal was valid, and consented to its dismissal on that ground - that the Attorney General did not consent to its dismissal for any reason connected with the merits of the case, but was of the opinion that this case was one which ought to be reviewed by the Supreme Court of the U.S. and in order that the case might be acted on by that Court on its merits unembarrassed by any preliminary question on the validity of the appeal, he consented to the motion for dismissal with the view of directing the District Attorney in California to take a new and valid appeal in the case before the five years allowed therefor, had elapsed - Accordingly, after its dismissal, the Attorney General directed the District Attorney to take a new appeal

(Signed) J. J. Coffey

Sworn & Subscribed
this 19th day of March 1865 before
me in open court
D. W. Middleton
Clk. Sup. Ct. U.S.

To M. A. R. de Roli, and E. L. Goold Esq
her Attorney-

You will please take notice, that on the 3d Monday in April next at 10 o'clock A. M. of that day, or as soon thereafter as counsel can be heard, at the U.S. Court House in Monterey, I shall move the Court, on behalf of the United States, for an order granting a new appeal from the decree of confirmation in the case of M. A. R. de Roli vs the United States No 318 and that said motion will be made upon an affidavit on file in said case of which the foregoing is a copy, and upon the papers in the case

Monterey March 6, 1865

R. C. Whiting U.S.
Attorney-

I admit service of a copy of the foregoing Affidavit & Notice-

I Henry D Barrows United States Marshall for the Southern Dist of California do hereby certify that I received the within affidavit and notice on Saturday March 11th AD 1865 at 2 o'clock P. M and served the same on Edmond L. Goold Claimants Atty by leaving at his office in the City & County of San Francisco a certified copy of the same on March 11th 1865 —

H. D Barrows Marshall
Robt Height Dep

No 318

U. S. A. R. de Rodi
vs
The United States

Copy affidavit & notice

Filed March 14 — 1865
John W. Dwinelle Clk
By Robt Height
Deputy Clerk

R. C. Whiting
U. S. Attorney

318 SD
PAGE 87

United States District Court
District of California.

The United States
pltff
v.
Manuel Antonio
Rodriguez de Poli
Deft

No 318.

To E. L. Gould Esq
Attorney for claimant
Sir.

Please take notice that the above named plaintiff intend to appeal to the Supreme Court of the United States from the decree of the District Court of the United States for the District of California, entered on the 1st day of April 1861. in this cause.

San Francisco
April 21st 1868.

Delos Lake
U. S. Attorney

318 S.D.

U. S. District Court
Dist. of Cal

The United States
v.
Manuel Antonio
Rodriguez de Poli

notice of appeal

Filed 21 April 1868
Geo. E. Whitney
Clerk

Copy of written notice left in M. C. Pepper's office April 21. 1868
J. W. Denver

The United States of America -
District Court of the United States
District of California -

The United States
Appellants
vs
Manuel Antonio
Rodriguez de Poli
Appellee

No. 318

To
Manuel Antonio Rodriguez
de Poli defendant and
appellee and
E. L. Goold
attorney for defendant &c

You are hereby cited and admonished to be and appear, at a Supreme Court of the United States to be holden in the City of Washington, District of Columbia on the First Monday of December next, pursuant to an order of appeal granted on the 24th day

of April A.D. 1868 in open Court, in a certain suit now pending in the United States District Court for the District of California, wherein the United States are plaintiffs and Manuel Antonio Rodriguez de Poli is defendant, on appeal, to show cause if any there be why the decision in said appeal mentioned should not be corrected, and speedy justice done to the parties in that behalf.

Witness my hand and seal, at San Francisco, this 27th day of April 1868.

Ogden Hoffman (seal)
District Judge

April 28 1868

State of California
City & Co. of San Francisco } s.s.

Thomas M. Jewett, being duly sworn deposes & says: that he is over twenty one years of age and a citizen of the United States of America; that he has been for more than one year and is at present a clerk in the Office of Delos Lake Esq. United States Attorney for the District of California; that on the 28th day of April 1868 he made service annexed of the Citation in the case of The United States vs. Manuel Antonio Rodriguez de Poli No 318 by leaving a copy of the same at the office occupied by E. L. Goold Esq Attorney for Claimant in the City of San Francisco.

Sworn to before me
this 31st day of Aug.
1868.

W. H. Lardner
N. P. Comr.

Thomas M. Jewett

318.

U. S. Dist Court
Dist. of Cal
Reg No. 458

The United States

v.

Manuel Antonio
Rodriguez de Poli

Citation

Filed April 29/ 1868
Geo Ellis Clerk
by O'Neall
Dep

318 SD
PAGE 93

63

Received of George E. Whitney Clerk of the Circuit Court of the United States district of California and Ex officio Clerk of the District Court district aforesaid the Transcript of the Record in the case of The United States vs M. A. Rodriquez de Lolé et al, Appeal from the District Court of the United States, district of California

Delos Lake
U. S. Atty

San Francisco Sept 4. 1868

District Of US
Dist of California

The United States
vs
M. A. Rodriguez
de Polo et al

Receipt of US
Dist Attorney
Transcript of the
Record on appeal

Filed Sept 4. 1865
Geo Pl. Sutney
Clk
by Inman
Dep Clk

State of California
City and County of San Francisco.

Edward Conway being duly sworn says, that on the 30th day of March, 1861 he was one of the persons known as E. Conway & Co. composed of E. Conway James H. White and others and still is a member of such firm.

That he is of [illegible] years of age and resides in said City and County.

That he has had the management of purchasing Real Estate for said company, and is personally acquainted with the facts herein stated.

That he is the agent and Attorney in fact of said James H. White; that said White is now absent on business from said State. That after the dismissal of the appeal in the Supreme Court of the United States in case No. 318, District Court of the United States for the Southern District of California entitled "M. A. R. de Poli, ads. The United States" which appeal was dismissed 31st March, 1861, and after said White had seen a copy of the order so dismissing the same, and after the same was filed in the District Court of the United States for the Southern District of California, viz:

on the 16th day of September, 1864 said White purchased of D. C. Waterman E. G. Gould J. Vassault George S. Wright and Henry Webb, the owners of the "Ex Mission Santa Buenaventura" the premises described as follows; (~~See Deed.~~) ~~the consideration therefor being~~. "All lands North of a line drawn East from the South East corner of the Rancho "Santa Ana", according to the final survey on file in the Office of the U. S. Surveyor General for California;" the consideration therefor being "for the price or sum of one dollar per acre, payable in U. S. Gold Coin, within sixty days after patent shall have been received, at the Office of the U. S. Surveyor General for California, and said White shall have been notified of its said receipt."

That said White made such purchase in good faith, and relying upon such dismissal of appeal.

That said White, before making such purchase, consulted with his Counsel, Patterson, Wallace & Stow practicing lawyers in San Francisco, who, at his request, examined the papers in said case, Decree of confirmation, Mandate dismissing appeal to, and after such examination they advised said White that the said Decree of

confirmation was final, [illegible]
same could not and would [illegible]
opened, and that no further [illegible]
could or would be allowed [illegible]
said deed. That said White
relied and acted upon such advice
in making such purchase; and so
relied and acted in good faith.

That subsequently, on the 20th day
of October, said White conveyed
to the persons named in the deed,
a copy of which is hereto annexed,
marked "B", the premises therein
described; that said persons together
with said White composed the firm
of E. Conway & Co.

That on said 20th October, E.
Conway & Co paid for said last men-
-tioned deed as follows; For 31/36 of
said Mission title, being the portion of
J. Vassanet, E. G. Gould and A. C.
Waterman, 40 shares, being 40/640 of
all real and personal property of
said E. Conway & Co in Contra Costa,
Los Angeles and Santa Barbara Counties
as per list marked "C" hereunto annexed.

That the consideration so paid
was of the value of $40,000 Gold
Coin. That said E. Conway & Co.
are discharged from payment of said
31/36 as appears by receipt marked "D".

and that said Vassaut, Gould and others, preferred shares in said Company's property, to the payment of one dollar per acre, in Gold Coin. That after taking legal advice, and after said Mandate dismissing said appeal was entered, and previous to December, 1861, the date of notice of re-appeal, Thomas Brown now out of the State, and others did, for valuable considerations, to wit; some sixteen thousand dollars, Gold coin of the United States, purchase certain shares or interests in said "real estate belonging to E. Conway & Co, and that such purchases were based upon the dismissal of appeal in said case, before the U. S. Supreme Court.

The Attorney General and Counsel for grantees being both present, as set forth in said Mandate.

That said E. Conway & Co, have expended in and about said purchase, the further sum of $15,000 Gold Coin, for the benefit of said real estate.

E. Co[illegible]y

Subscribed and sworn to, Before me, this 17th day of May AD 1865.

E. V. Sawyer
Notary Public

16

M A de Poli

v.

United States

aff of Conway

Filed June 5th 1865

Jo Whiteley Clerk

U. S. Dist Court for the Dist Cala

M. A. Rodriguez et al. } No #

The United States } San Buenaventura

318 SD
PAGE 101

This is an application for an appeal from a decree of the District for the Southern District of California. There have been two appeals by the United States and the last according to the record was dismissed with the consent of the Attorney General of the United States. That an appeal may be taken within five years is true and as many as the party chooses where there are dismissals on technical grounds. The serious question in this case is whether the consent of the Atty Genl as appears by the record does not bar a right to a new appeal. The mandate sent to this Court Records that the appeal was dismissed with the consent of the Atty Genl. An affidavit of Mr. Coffee who was deputy Atty Genl is offered to explain the reasons of that consent which I deem wholly inadmissible. We are to be governed by the Record. A question has been made as to the power of the Atty Genl to consent to a dismissal and thus waive the rights of the Government. If the legal business of the Government is not under the control of the Atty Genl, it is difficult to perceive where it is. In this District there are probably one hundred cases more or less where appeals have been dismissed by the Atty Genl or upon his instruction to District Attorneys. If these can be opened upon the mere affidavit of the law officer of the Government where it is admitted the consent was given and where the record shows it there

would be great confusion and injustice. Purchasers have a right to rely upon the records of the courts and are not expected to inquire into the motives which may have induced the action of Public officers. It is urged that in this case parties purchased on the faith of the consent appearing of record but this court has nothing to do with any particular equity though the law should be so administered that the rights of all may be secure. If the Atty Genl consented to the dismissal and had it inserted in the record that the consent was without prejudice to the right to a new appeal that reservation would have appeared in the mandate sent to this court and all would have been apprised of it. My opinions on these Mission cases have been given and it is known I differed from my predecessor and the land commission but I am unwilling to sanction the principle that a record can be explained by affidavit or that the Atty Genl has not full power to bind the government in any matter occurring in the ordinary course of litigation. The motion is denied.

Fletcher M. Haight
U.S. Dist. Judge

21

No 318

17

M A R de Polé
v
United States

Opinion

Filed June 5th 1865
J P Wheeler
Clk

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

De Polo
Admr

United States
Claiming the Mission Lands of San Bernardino

And now, on this day come the parties hereto, by their respective Counsel, and the motion of the United States for an appeal herein from the decree of Confirmation heretofore entered, having been argued and submitted, and the Court having duly considered the same,

It is ordered, adjudged and decreed that said motion be denied, and the said appeal be dismissed.

H. M. Haight
Judge of Southern District of California —

Nunc pro tunc signed & opened Court this 5th day of June 1865

U. S. Dist. Ct. S. Dist. Ala.

M. A. R. de Pali

vs

The United States

Decree overruling motion for appeal

Filed June 5th 1865

John D. Wheeler

Clk

Under the act of Congress of March 3rd 1851, a claim to certain lands in California was presented for confirmation to the Board of Land Commissioners on the 11th of Novr 1852.

On the 15th of May 1855, the Commissioners made a decree in favor of the Claimant declaring the title to be in him "valid and good"

An appeal from this decree of the Commissioners was taken by the United States, to the District Court, on the 13th day of February 1856,

On the 1st day of April 1861, the District Court affirmed the decree of the board of Land Commissioners

From the District Court the United States took an appeal to the Supreme Court of the United States. No measures were taken to prosecute this appeal, and it was dismissed by the Supreme Court for the reason that no transcript was brought up.

In October 1862, and after the dismissal of the first appeal, a new appeal was asked for by Counsel representing the United States, and the District Court for California allowed the same.

This last appeal was so far perfected, that the record was brought into the Supreme Court and filed.

The claimants Counsel moved that the case be dismissed, but it does not appear that the motion was agreed?

The record of the Supreme Court shows, however, that on the 24th day of March 1864, the Attorney General of the United States came into Court, and with his consent the appeal was dismissed

Since this last dis=missal a third application has been made to the U. S. District Court for California for the al=lowance of an appeal, and has been refused.

Since then the land has been sold for an ample consideration, and is now owned and possessed by a new party who desires to obtain his patent from the Government.

As the full term of five years has not yet elapsed since the judgment of confirmation was rendered by the U. S. District Court for California, it is important to ascertain the rights of the respective parties at this time

The dismissal of the appeal by the Supreme Court of the United States restored the judgment of the U. S. District Court for California, confirmatory of claimants title in propria vigore

The important question remains, will another appeal in the case, if allowed by the District Court, be sanctioned and sustained by the Supreme Court of the United States?

I think not for the following reasons.

Although according to the decision in Yeaton et al vs Lenox et al 8th Peters 123, a party may appeal after his appeal has been dismissed for informality, if the second appeal be taken within five years, it has no where been decided, and it is believed to be against all the analogies of the law, that an appellant may be permitted to take and prosecute an appeal after one regular and formal appeal, in the same case, has been dismissed by the appellate board with his consent

In the very case cited, - Yeaton vs Lenox, it was claimed in argument, and the proposition was not controverted, that if under under Rule 9 of the Supreme Court, the appellee files the

record and procures the cause to be dismissed, the appellant will thereby be barred of his right of appeal unless for some special reason the intervention of fraud and covin, for instance, the Court dismissing the appeal, shall make an order in his behalf.

Again, we find that the Supreme Court has provided in Rule No. 16, that;— "Where there is no appearance for the plaintiff, when the case is called for trial, the defendant may have the Plaintiff called, and dismiss the Writ of Error, or he may open the record and pray for an affirmance of the judgment."

Rule 24, of the Supreme Court, provides that;— "in all cases of dismissal of any suit, it shall be the duty of the Clerk to issue a

" mandate, or other proper process
" in the nature of the proceeding,
" to the Court below for the
" purpose of informing such
" Court of the proceedings had
" in the case, that further
" proceedings may be had therein
" according to law and justice."

Now upon the principle that " writ of error will not lie to a judgment confessed" I maintain that an appeal will not be sanctioned by the appellate Court, after it has dismissed on motion of the appellee, and with the consent of the appellant, one appeal in the same suit. At least, not without some showing of fraud or circumvention on the part of the appellee.

Lastly. I claim that the present party in possession of the land, having bought the same after the second appeal had been dismissed with the consent of the Attorney General

of the United States, comes forward with a greatly increased equity against any claim to be asserted by the Government, inasmuch as he was entitled to the presumption that the dismissal by consent etc, amounted to a "retrax it" on the part of the United States of any claim to the land.

If the same proceedings had taken place between individual citizens of the United States, who had a legal controversy respecting a tract of land, sound equity would require that the appellant should be concluded by the dismissal of his appeal, with his consent upon the principle of estoppel.

In every view of the case, I am clearly of the opinion that the party

now in possession of the land, is entitled to his patent without further let or hind=rance on the part of the United States.

Signed R. L. Spalding

M A R de Polk

vs

The United States

Brief of

Claimant

Filed June 5/65

The United States
appellant
vs.
Manuel Antonio Rodrigues
de Poli -
appellee

No 318
"Mission
San Buenaventura"

(Appellants Brief on Motion
for a new appeal)

This is a motion for a new appeal made on behalf of the government - The decree of confirmation in the U.S. Dist. Court was rendered April 1st 1861 - The former appeal was dismissed December Term 1863 for technical reasons, as will appear from the affidavit of T. J. Coffey, assistant Attorney General, now on file =

A citation has been issued & served on claimants attorney; and on the argument of this motion it is claimed by him that no new appeal can be granted for the reason that the Mandate shows upon its face that the former appeal was dismissed

by consent of the U.S. Attorney General

1st The act of March 3d 1861 authorizes

an appeal to the supreme court of the U.S. to the party against whom the decission of the District court is rendered, in California land cases - The act gives the right in general terms, but the supreme court in the case of Sunol et als 20 How. R. P. 262, say, "the time in which the appeal may be taken must be governed by the Judiciary act of 1789 + 1803." - The party against whom a decree is rendered therefore, has five years in which to appeal, and if the first appeal be dismissed upon technical grounds he may have a new appeal, any time within the five years -

The act of Congress allows five years and the period can not be shortened - 20 How R. P. 268 - See also 19 How. 182 - 6 How. 81 - 6 How. 106 -

If the appellee were to proceed under the Mandate + get his Patent for the land, his title will still

be subject to the decission of the

be subject to the decision of the Supreme Court, if the government should bring up the case on appeal any time within the time limited by law - 20 How. R. 263 -

It is objected that the minutes of the clerk of the supreme Court, should be produced in support of this motion, to show that the former appeal was dismissed with leave to the government to take a new appeal - This would be an unnecessary Entry, if shown to have been made, for the act of Congress gives the right of appeal any time within five years, and the supreme Court can neither add to, or take away that right - And besides, the affidavit of Coffey, shows that the appeal was dismissed for technical reasons alone, and the U.S. Supreme Court have repeatedly decided that in such cases, a new appeal may be taken within the time fixed by the law -

Affidavits have frequently

been used to Establish facts out-side of the record, on the hearing of Motions See the United States vs. Gomez 23 How. 326 –

A dismissal of an appeal upon technical grounds is not an affirmance of the Decree in the Court below 23 How R. P. 340 =

If the right of the government to an appeal within 5 years has not been barred, no admission, or consent of the Attorney General could deprive the government of the Exercise of that right –

See the concluding part of the opinion of the Court in the Gomez case 23 How R. P. 341 =

The United States District Court has no discretion in the matter of granting appeals under the acts of Congress authorizing appeals in these particular cases =

It is the peculiar province of the Supreme Court to determine whether the case when it comes before that tribunal, is or is not within their appellate Jurisdiction

within their appellate Jurisdiction

The late Chief Justice Taney, in 2d Blacks Reports P. 543 uses this impressive language—

"It does not by
" any means follow, that the Judge
" who authorizes the appeal has made
" up his mind that the party is legally
" Entitled to it— He may, and no doubt
" often does, Entertain doubts upon
" the subject, or may regard the Point
" as new and undecided, and upon
" which different opinions may
" be Entertained, and in such cases
" he grants the appeal in order
" to bring the Matter before the
" Court and Enable it to decide
" for itself whether the case is
" or is not within their appellate
" Jurisdiction as regulated by the
" act of Congress"

318 SD
PAGE 119

In the case of Holmes vs Rogers 13 Cal R. P. 202 & 203 Justice Baldwin Says "If the attorney assented to the Decree this was no Error — If the Decree was Erroneous for this, there was a right of appeal &c —
Showing that a Consent Decree

may be appealed from as well as any other - the right of appeal is a statute right & can not be destroyed by consent of counsel - the case of Holmes vs Rogers was a case where the party sought to get over the consent of his counsel - the attorney could consent to the decree but he could not take away the right of appeal -

A valid appeal entirely vacates the judgment or decree appealed from, and if not entered in the court above as in case of a nonsuit, the court above must make a new judgment or decree 17. Pick 142 - 20 Pick. 510 - 5 Mass R. 376 - 13 Mass 265-266 -
Until a new decree is made in the supreme court, or the lapse of five years in which to take an appeal has passed, the right to appeal subsists, and a mere dismissal for technical errors in notice or otherwise can be no bar to a new appeal - An appeal will not have any effect when it is erroneously

taken, - See Commonwealth vs Mossinger 4 Mass R. 462-471 Campbell vs Howard 5 Mass 376 379 - also 22 Pick. 11 17 Pick 295-298 - 16 Pick 10 -

This is one of the Mission cases ~~the merits of~~ which have been already decided to be without merit by the U.S. Supreme Court & Reported in the 1st Wallace These decisions are adverse to the ~~adverse to the~~ Claimants of San Gabriel and San Luis Rey - The Plat on file in the Surveyor General's office shows an official Survey in the case under consideration for upwards of one hundred thousand acres of land more than was confirmed to the claimants by the board of land Commissioners or by the District Court, and to deny the Motion for a new appeal would be to allow a notoriously Erroneous Decree to stand as good, and probably result in depriving the government of Millions of Dollars worth of property under a fraudulent Survey - This the Court ~~cannot~~ can not ~~to~~ sanction & do justice to the government - See U.S. vs Young 1 Wallace

the concluding comments of Justice Clifford 2 Wl 702 =

R.C. Whiting U.S.
Dist. Attorney for
the Southern Dist. of
California -

The United States
vs
Manuel Antonio
Rodriguez de Pala.

Appellants Brief
on Motion for Dismissal

Filed June 5, 1865

R.C. Whiting
U S Atty -

The United States
vs
Manuel Antonio Rodriguez de Poli

U. S. Dist Court
Southern District
California —

It is ordered herein that the former order herein of June 5th 1865, be so far modified as to allow the Clerk of this Court, to issue two certified copies of the Order entered herein August 1864, directing filing of the Mandate — this Order being made on application of Claimants Attorneys —

July 22 1865

Wm Fletcher M. Haight
District Judge Southern
District of California

19

The State
vs
M. A. Rodriguez de Poli
San Buenaventura

Order

Filed July 25/15
J. Whelan
Clk

United States District Court Southern District of California

Manuel Antonio Rodriguez de Roli appellants

vs

The United States appellee

Now comes R.C. Whiting U.S. District Attorney for the Southern District of California and moves the court on behalf of the United States for an order vacating & setting aside an order entered herein on the 5th day of June AD 1865 directing the clerk to withhold any & all papers transcripts & certificates & records for ninety days - and the said U.S. Atty further moves the court for an order requiring the clerk of said court forthwith to make out & deliver to R.C. Whiting U.S. Atty - for the use of the U.S. Attorney General at Washington a certified copy of the Decree of Confirmation entered herein on the day of 186 together with all subsequent proceedings in the cause & all papers & entries therein, and that no further certificate or

transcript thereof as above set forth be issued by said Clerk until the first day of January next.
August 21st 1864.
It is ordered accordingly.
Fletcher M. Haight
District Judge, D.C.T.

No 70

U. S. Dist Court
South Dist Cal

M Ant R de Pali
vs
The United States

Order for transmission
of papers to Atty Genl &c

Filed Aug 21st 1865
John Wheeler
Clk

UNITED STATES OF AMERICA, ss.

THE PRESIDENT OF THE UNITED STATES OF AMERICA,

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

GREETING:

Whereas lately, in the District Court of the United States for the Southern District of California, ~~before you,~~ in a cause between The United States, Appellants and Manuel Antonio Rodriguez Del Poli Appellee, wherein the decree of the said District Court entered in said cause on the first day of April 1861, is in the following words viz:

"This cause came on to be heard on appeal from the decision of the United States board of land commissioners to ascertain and settle private land claims in California on a transcript and proceedings of said board, and the papers and evidence upon which said decision was made, and the further evidence adduced; and counsel for the respective parties having been heard it is ordered adjudged and decreed that the decision of the said board be affirmed.

The land of which confirmation is made is situated in the County of Santa Barbara, and known as the mission of San Buenaventura, and which were known as belonging to the mission, including the laguna Nuenemo el palo alto los de siembas de Santa Paula la canada de la mission, and all those lands which at the date of the grant in this case had not been

granted by the Mexican government, and were then recognized as lands of the Mission establishment, Excepting the orchards, vineyards, churches and buildings belonging to the said Mission at the date of the grant, to the extent of Eleven leagues within said boundaries and no more"

as by the inspection of the transcript of the record _____

_____ of the said District

Court, which was brought into the Supreme Court of the United States by virtue of an appeal

agreeably to the Act of Congress, _____

_____ in such case made and provided, fully and at large appears

And whereas, in the present term of December, in the year of our Lord one thousand eight hundred and Sixty-eight, the said cause came on to be heard before the said Supreme Court, on the said transcript of the record, and ~~was argued by counsel. On consideration thereof~~ in pursuance of Stipulation signed and filed by Counsel - and on the motion of Mr. Attorney General Evarts - It is now here ordered, adjudged and decreed by this Court that the decree of the District Court of the United States for the Southern District of California, entered in this cause on the first day of April, One thousand Eight hundred and Sixty-one, be, and the same is hereby affirmed.

And it is further ordered that all orders and proceedings of the said District Court in said cause, subsequent to the said decree of April first Eighteen hundred and Sixty-one be reversed.

And it is further ordered that this cause be, and the same is hereby remanded to the District Court of the United States for the District of California. 2nd March 1869.

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

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

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

COSTS OF— ———

Clerk . . . $ ———

Attorney . . $ ———

$ ———

~~Taxed by~~ D. W. Middleton

Clerk of the Supreme Court of the United States.

318. S.D.

No. 302 December Term, 1868.

MANDATE

SUPREME COURT UNITED STATES.

United States

vs.

McKee & Dale

Filed June 1st. A.D. 1869

on motion of C. S. Cooke

Esq. of Counsel for Claimants

Appellees

Geo. Whitney Clerk

By R. H. Gruwood

Dep.

United States District Court for the District of California.

The United States
vs
M. A. Rodriguez de Poli.
} No. 318 of Southern District

Please take notice that the claimants in the above entitled cause, transferred to this court from the late U. S. District Court for the Southern District of California under the Act of Congress abolishing the said Southern District hereby offer and consent to set aside and rescind all the orders, proceedings and decrees had and entered in the said cause in the said Southern District Court on the 13. day of October 1864, and that they will move this Court to enter an order to that effect herein.

Nov. 30. 1866. H. W. Carpenter
for Claimants.

To Delos Lake Esq.
U. S. Atty.

I hereby accept the foregoing offer, and consent to the granting of the said motion on the ground that the said supposed proceedings, order and decree are and were unauthorized, null and void.

Delos Lake
U. S. Atty.

Upon the foregoing notice, stipulation and consent, and upon motion of the attorney for claimants, the attorney for the United States

being present in open court, it is ordered and decreed that the said order, proceedings and decree referred to, to wit, those had and entered at Monterey in the District Court of the Southern District of California on the 13th day of October 1864, and in which a new and different decree of confirmation, after the filing of the ~~result~~ mandate from the Supreme Court of the United States, was attempted to be entered herein, be and the same are hereby rescinded and set aside as null and void.

Ogden Hoffman
Dist Judge

San Luis Rey
November 30th 1866.

No 318.

U. S. Dist. Court
Dist of Cala

The United States
vs
M. A. Rodriguez de Pole

Order setting aside certain
proceedings in Probate Court
dated Nov 20, 66

112

"C"

Memorandum of
Property
belonging to
E. Conway & Co

1st 160 Acres of land enclosed with four board fence, with ranch houses, machinery, Steam engine boiler, artesian tools & apparatus, wagon &c &c. In Contra Costa Co two miles from San Pablo.
Title – Rancho – "El Sobrante".

2nd 160 acres of land, with a dobe house machinery &c, in Santa Barbara Co Eight miles from San Buenaventura –
Title – School location of Gilbert and "Ex Mission San Buenaventura"

3rd 640 acres of land in Santa Barbara Co, house tanks 10,000 Gallons Oil. four mule team Corrall &c
Title – School location and "Ex mission San Buenaventura"

4th - Parker Springs Santa Barbara Co
School location not perfect
320 acres of land
Title School location
(No certificate)

1 Rancho Santa Paula y Saticoy as approved by U S Surveyor General, More Bros and Contingent title of Brigs & "Ex mission San Buenaventura"

5th Gilbert East Springs. Santa Barbara Co.
320 acres of land.
Title - certificate School location
Rancho "Santa Paula y Saticoy" as Surveyed by U S Surveyor Genl - and contingent title of Briggs and Rancho "Ex Mission San Buenaventura" —

6th Title - More Bros. All springs on Santa Paula y Saticoy 4 leagues as Surveyed by U.S. Sur. Genl -

7th Title - More Bros All minerals including Oil. Asphaltum &c.

on Rancho "Lespe" Santa Barbara
be as hereafter determined by
U S authorities.

8th " 160 Acres of land in Los Angeles
Co - Tille School location.
Gilbert - on publicl land - not
Surveyed

9th " 40 acre tract in Pueblo Los
Angeles - Title perfect from
City authorities

10th " 40 " " "

11th " 40 " " "

12th " Santa Barbara Co All
land which may be included
in any Patent from the U
S. or final survey north of
a line drawn East from
the South East corner of
the Rancho Santa Ana - as
per Survey - on file in U
S Surveyor Genls Office,

Ministry of War
and Marine.

Section of
Principal } Excellency.

Translation of Document "B"

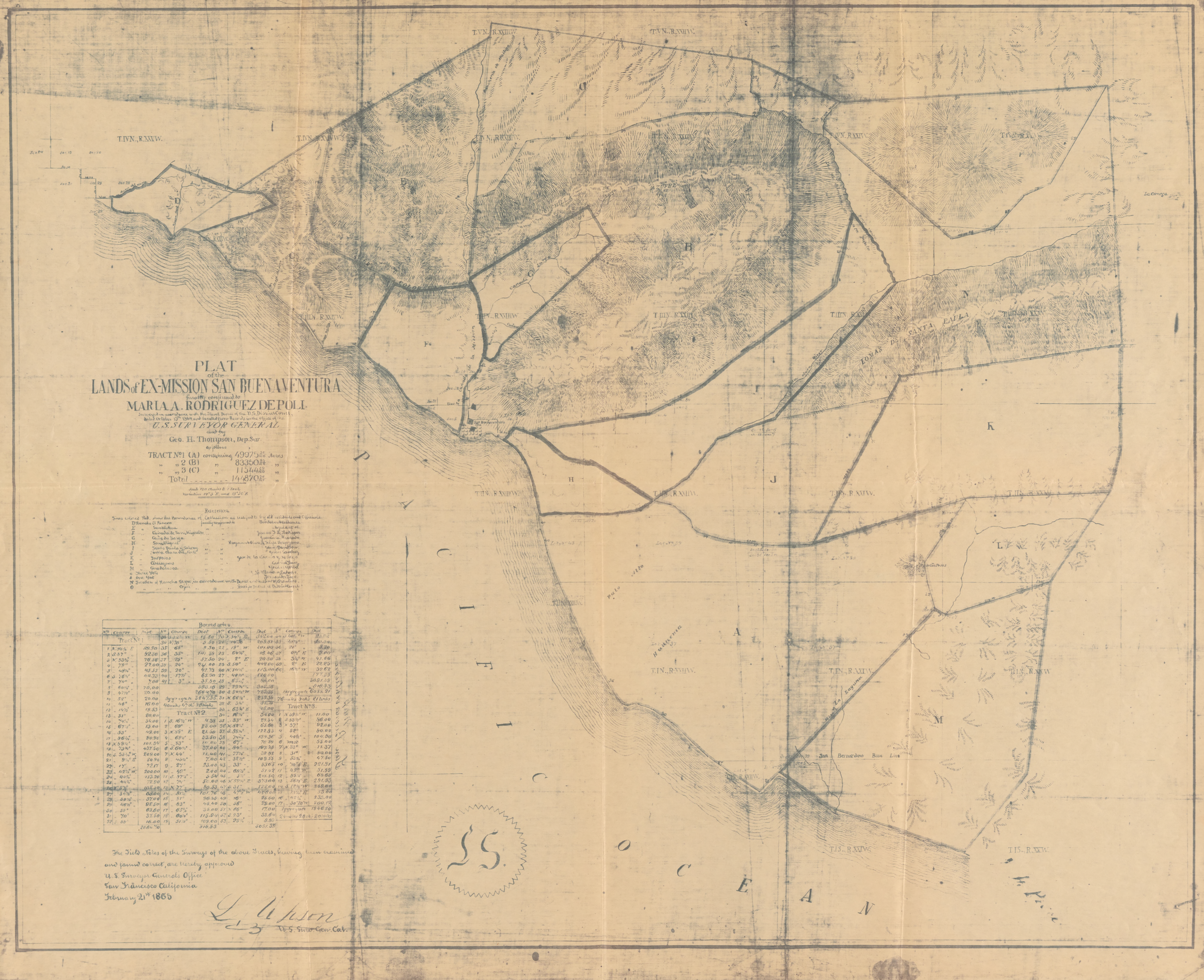
To the general Commander of California. I this day communicate as follows.

The preparations which the United States are making and the approach of the Naval forces towards our ports make me doubt that war with that power is about breaking out and as his Excellency the President Protemo is resolved to sustain the rights of the Nation he wishes that in all the ports of the Republic where the Enemy may present itself a vigorous defence be made capable of giving honor and glory to the National flag—

For that object and when the Supreme Government appropriates and sends for the necessary means it rests upon your patriotism and fidelity to dictate the measures which you may judge necessary for the defence of that dependencie for which purpose you and His Excellency are moistled with full powers I

And I have the honor to transcribe the same to you for Your Cognisance hoping that you on your part will leave no Efforts to preserve Entire the rights of the Nation —
God & Liberty.
Mexico March 10th 1846.
Pomet.

To His Excellency the Governor of the Department of the California —


PLAT
of the
LANDS of EX-MISSION SAN BUENAVENTURA
finally confirmed to
MARIA A. RODRIGUEZ DE POLI.
Surveyed in accordance with the Final Decree of the U.S. District Court,
dated October 19th 1864, and located from the original plats of the
U.S. SURVEYOR GENERAL
and by
Geo. H. Thompson, Dep. Sur.
as follows
TRACT No. 1 (A) containing 49975 25/100 Acres
" " 2 (B) " 83350 22/100 "
" " 3 (C) " 11544 48/100 "
Total 144870 95/100 "
Scale 20 Chains to 1 Inch
Variation 14° 5' E. and 15° 50' E.
References
Lines colored Red, show the Boundaries of Ranchos as claimed by old residents and officials
D Rancho El Princeso
E " Sanjulana
F " Cañada de San Miguelito
G " Cañada la Sauza
H " Sanjulianito
I " Santa Paula y Saticoy
J " Santa Clara del Norte
K " Sespe
L " Calleguas
M " Guadalusca
a Three Sticks
b One Stick
N Location of Rancho Sespe, in accordance with the Decree of the Court in Land Claims.
O " " " Ojai
Boundaries.
Tract No. 1
Tract No. 2.
Tract No. 3.
The Field Notes of the Surveys of the above Tracts, having been examined and found correct, are hereby approved
U. S. Surveyor General's Office
San Francisco California
February 21st 1865
L. Upson
U. S. Surv. Gen. Cal.
T.IVN., R.XXIIIW.
T.IVN., R.XXIIW.
T.IVN., R.XXIW.
T.IVN., R.XXIVW.
T.IIIN., R.XXIIIW.
T.IIIN., R.XXIIW.
T.IIIN., R.XXIW.
T.IIIN., R.XXIVW.
T.IIN., R.XXIIIW.
T.IIN., R.XXIIW.
T.IIN., R.XXIW.
T.IIN., R.XXIVW.
T.IS., R.XXIIIW.
T.IS., R.XXIIW.
T.IS., R.XXIW.
T.IS., R.XXIVW.
Rancho de Sespe
Cañada de Santa Maria
Cañada de San Miguelito
Cañada la Sauza
Santa Paula
Santa Clara del Norte
Calleguas
Guadalusca
Lomas de Santa Paula
Rio Santa Clara
Rio Calleguas
Rio Santa Paula
Rancho Ojai
Rancho Sespe
San Buenaventura
Rancho Saticoy
Rancho Sanjulianito
Rancho Sanjulana
Rancho Princeso
Rancho Santa Paula y Saticoy
Rancho Cañada de San Miguelito
Rancho Cañada la Sauza
Rancho Santa Clara del Norte
Rancho Calleguas
Rancho Guadalusca
Rancho Sespe
Rancho Ojai
Rancho Santa Paula y Saticoy
Rancho Sanjulana
Rancho Sanjulianito
Rancho Santa Clara del Norte
Rancho Calleguas
Rancho Guadalusca
Rancho Sespe
Rancho Ojai
Rancho Saticoy
Rancho Princeso
Rancho Cañada de San Miguelito
Rancho Cañada la Sauza
Rancho Santa Paula y Saticoy
Rancho Sanjulana
Rancho Sanjulianito
Rancho Santa Clara del Norte
Rancho Calleguas
Rancho Guadalusca
Rancho Sespe
Rancho Ojai
San Bernardino Base Line
Pacific Ocean
U.S.