

CASE No.

334

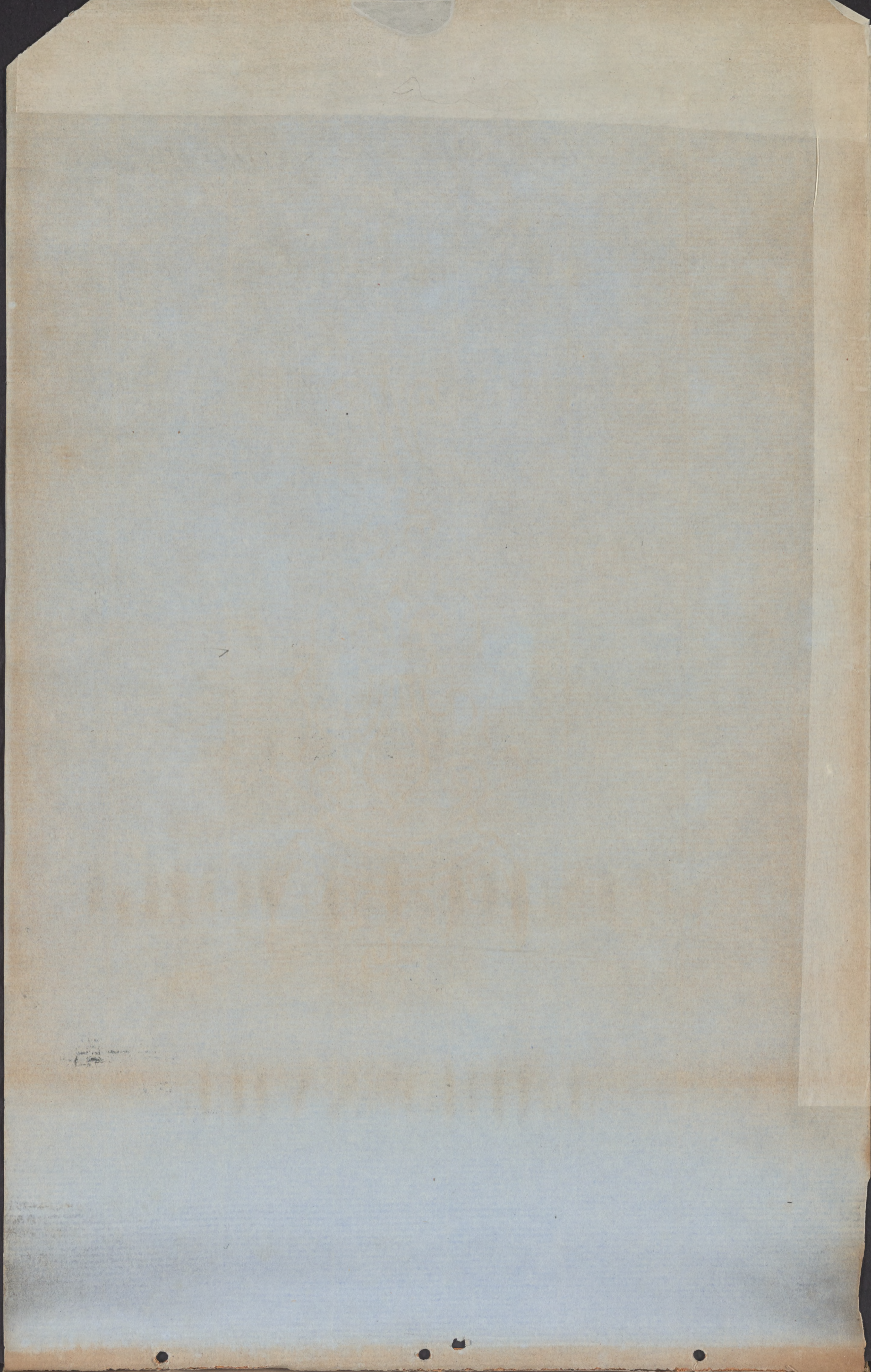
SOUTHERN DISTRICT

**FOR PART OF THE PLACE
NAMED SANTA CRUZ GRANT**

**JOSE ANTONIO AGUIRRE
CLAIMANT**

Photostat 12/8/78

July
Sep-



TRANSCRIPT

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PAGE 1

OF THE

PROCEEDINGS

IN CASE

NO. 815

Jose Antonio Aguirre

CLAIMANT

VS.

THE UNITED STATES, DEFENDANT,

part of
FOR THE PLACE NAMED

"Island of Santa Cruz"

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

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The Petition of *José Antonio Aguirre*,
for the Place named
Island of Santa Cruz
was presented, and ordered to be filed and docketed with No. 805 and is as follows, to wit;

(Vide page 3 of this Transcript.)

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

San Francisco Sept. 26' 1854.
In Case no. 805, *José Antonio Aguirre* for the half of the Island of Santa Cruz, the deposition of *Fran B. Alvarado*, a witness in behalf of the claimant, taken before Commissioner Peter Sott, with documents marked "A. B. P. S.", annexed thereto, was filed;

(Vide page 4 of this Transcript.)

San Francisco January 9' 1855.
Case no. 805 was ordered to be placed at the foot of the 4' class cases on the Trial Docket.

San Francisco March 13' 1855.
Case no. 805 was submitted without argument and taken under advisement,

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San Francisco June 5th 1855.
In the same case Commissioner J.B. Fairwell
delivered the Opinion of the Board respecting the
claim:

(See page 25 of this Transcript)

And the following was made, to wit:

(See page 29 of this Transcript)

refuse

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To the Board of Commissioners for
ascertaining and settling private Land
claims in the State of California,

Petitioner,

Your Petitioner Jose
Antonio Aguirre, of the County of
San Diego in the State of California respect-
fully represents that he claims an undi-
vided one half of the Island of Santo
Cruz situated in front of the Roadstead
of Santa Barbara in the State of
California.

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That he claims the same
in fee by virtue of a grant made to An-
dres Castillero under the authority of the
Mexican Government an order from the
Minister of the Interior of Mexico to the
authority of the Department of California
having been found for that purpose a copy
of which order marked B and transla-
tion of same marked C being herewith
presented.

And Your petitioner further
shows that acting under the authority of
the said Mexican Government Juan B
Alvarado Governor of the Department of
the Californias did by grant dated at
Monterey the 22^d day of May 1834 a
certified copy of which grant is herewith
filed marked "D" and a Translation of
the same marked E convey the same to the
said Andres Castillero and Your petitioner
er further represents that the said Andres
Castillero on or about the day of the date
of his said grant did transfer an equal
undivided one half of said Island to
Your Petitioner the boundaries of which

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being natural ours cannot be more
clearly defined.

Your Petitioner prays
Your Honorably Board to take into
consideration his claim to said half of
said Lot and of Santa Cruz and direct
his title to be valid and confirm the same.

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Thos W Sutherland,
Atty for Aguirre,

Filed in Office March 3^d 1853.

(Signed)
Geo Fisher Secy.

United States of America 3
State of California 3 fs
San Francisco Sept 25. 1854.

This day came before Peter Lott
Commissioner for taking testimony to be
used before the Board of U. S. Land Com-
missioners in said State Juan B Alvarado
a witness on behalf of the claimant
Jose Antonio Aguirre in case no 805
on the docket of said Board and said
Witness being sworn deposed as follows
in Spanish which was interpreted into
English by the interpreter to said
Board.

Depo of
J. B. Alvarado

The U S Associate Land Agent is
present.

Testimony by Judge Sutherland for
claimant

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1st Question.

What is your Name age
and residence?

Answer.

My Name is Juan B
Alvarado My age 45 years My residence
Contra Costa County California.

2^d Question.

Look at the document
now shown to you marked "A.P.G."
and answer to this deposition and state
if you have before seen said document
if you state whom whom and the circum-
stances and state also whether you know
the signature of Pisado therein signed is
his genuine signature and your means
of knowledge thereof?

Answer.

I recognize this as a document
which I received at Santa Barbara
I think in 1838. I received it at the time
hand of Captain Andres Castillero. He
brought it to me as Governor of the
Californias from the Minister of the
Interior of Mexico. This signature of
Pisado is genuine.

I have frequently seen
his hand writing in Official correspondence
between him and myself when I was
Governor and he minister of the Interior
3^d Question.

Look at the printed stamp
at the head of said document and state
whether it is in conformity with the usual
style of Official Communications from the
Ministry of the Interior of Mexico?

Answer.

Yes, this is a form which was

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used by said Office, I have seen other documents and received them officially bearing the same Stamp,
4th Question.

State how such documents were usually transmitted from the Supreme Government to the Governors of California?
Answer.

They were generally sent by some Special Messenger or a Courier or by parties interested as the case might be, documents like this might come enveloped or open depending upon the care of the courier.
5th Question.

Look at the document now shown to you marked "P. J. L." an-
nued to this deposition and state whether you recognize the same as genuine, whether your name thereto subscribed is your genuine signature written at the date of said instrument and whether you know the signatures of said Manuel Jimeno of year your means of knowledge and whether his signatures to said document are genuine?
Answer.

I recognize this as a genuine document, It is a grant which I signed this is my genuine signature and the signatures of said Jimeno thereto are genuine. He was my Secretary and I have often seen him write.
6th Question.

State to whom you sent or delivered these two documents which have been exhibited to you in this deposition?

Answer. I remember to have sent them to Don Jose Antonio Aguirre. I considered him interested in the said Island and also the representation of Don Andres Castillero in the matter.

7th Question. State whether Andres Castillero ever told you that Jose Antonio Aguirre was interested in said Island, if you what that interest was.

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Answer. Yes, said Castillero told me that Aguirre was interested in the Island that he (Castillero) had promised him (Aguirre) that he should have one half of the Island for taking care of it and he accordingly requested him to attend to getting the papers pertaining to the title.

It was publicly known at the time that said Aguirre had a half interest in said Island.

8th Question. State if you know when Andres Castillero left this country.

Answer. The last time he left this country when he went to Mexico was I think in 1846 or 1847.

9th Question. When was it that Castillero told you of Aguirre having a half interest in said Island.

Answer. It was I think in 1838 before he returned to Mexico -

10th Question. Was the document before

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referred to marked B.P.L. designed to be a document of final title in the grant or was it contemplated that further steps should be taken for the purpose of making it complete?

Answer -

It was intended to be a perfect and complete title in Castille and there was nothing more contemplated to be done in the matter, nothing more was needed.

11th Question -

Why did you not insert in that grant the usual conditions requiring the building of a house and the occupancy and cultivation of the land?

Answer.

Because the Supreme Government did not require it in the order from Madrid the Minister of the Interior marked "A.P.L." and filed herewith and because I myself saw no necessity for it -

12th Question -

Why was this grant not made subject to the approval of the Departmental Assembly.

Answer.

Because the Territorial Junta had authorized me to act as I might deem proper in such cases.

13th Question.

State whether a grant made like this by the order of the Supreme Government required the approval of the Departmental Assembly to give it definitive validity -

Answer. It did not.

Cross Examined by U. S. Law Agent.

1st Question.

Was it customary for the Minister of the Interior to give instructions concerning grants and was it in his power so far as you know to dispense with the usual petition for grants.

Answer.

The Minister of the Interior might have had the power. I do not know what powers were delegated to him by the Supreme Government.

2nd Question.

Look again at document marked "A.P.L." herein before referred to and state whether there is any thing therein contained dispensing with the approval of the Departmental Assembly and the usual conditions of grants and if you state the words.

Answer.

There is nothing in this order requiring the approval of the Departmental Assembly or requiring any conditions to be required of the grantees.

3rd Question.

Did not the said last mentioned document require grants of lands and lands mentioned in said document to be made in conformity with the laws then in existence?

Answer.

I do not know what the law was at that time respecting the

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granting of Islands except the order
which I received about the same time
that I received the document from the
General Government.

4th Question -

State the purport of
the last order to which you refer in
your last answer.

Answer.

It was an order for granting
adjacent Islands to the Citizens of
Mexico.

5th Question.

Did said order prescribe
any terms on which said Islands should
be granted?

Answer.

I do not remember any such
terms there may have been such. I only
know that it contained an order for
granting the Islands adjacent to the
Coast.

6th Question -

Is there any material
departure from in that order from the
usual order to grant land coming from
the Supreme Government if you state
the difference?

6th Question objected to by Claimants
Counsel because the orders are written
documents and best testimony of their
contents.

"G.L."

Answer.

I understand that there is a
difference between said order and the usual

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orders coming from the Supreme Govern-
ment to grant lands.

What these differences
are I am not prepared to show. I cannot
recall unless I had other orders herewith
which to compare and point out wherein
they differ -

The order of which we are
speaking was an order to grant lands
and the others were not.

7th Question -

When the Supreme Govern-
ment intended to dispense with conditions
in the granting of lands was it not
always done in express terms.
Answer.

The circumstances, usage and
customs of the country were such
that express terms were not necessary
in order to dispense with such conditions
so far as the power of the Supreme
Government was concerned.

8th Question.

Could the Departmental
Assembly empower the Governor to
act as he pleased in granting lands.
Answer.

It could.

9th Question.

When and how was such
power given to you by the Departmental
Assembly.
Answer.

In 1834, 1838, and 1839 and
perhaps in 1840 I was empowered to act
according to my discretion in granting
lands at such times, as I might deem
necessary when the said Departmental

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Assembly was not in session,

It was by general consent
of the Members in 1839 and 1840. There
was an act passed in 1837 & 1838 giving
such power.

Juan B Alvarado

Subscribed and sworn to
before me Sept 25, 1854.
Peter Lott,
Comr

Filed in office Sept 26, 1854.
(Signed) Geo Fisher
Secy

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Ministerio de Lo
Interior }

Excmo Sr

A. P. L. Depo. of Inam B. Alvarado

Señor digno de toda consideracion y recom-
pensa los servicios que ha prestado à la
Nacion y à ese Departamento el Capitan
Don Andres Castillejo, cooperando eficaz-
mente al Restablecimiento del Orden y
à la Obediencia de Las Leyes constitucion
ales me manda el Excmo Sr presidente
recomendar las muy eficazmente à V. E.
y à esta Junta Departamental à fin de
que antes de qd se proceda al Reparto qd
debe hacerse conforme à las leyes y según
se le previene en orden de esta Jha de los
Terrenos de las Islas adyacentes à esa
península, se asigne à aquel individuo
el que elija en las comas inmediatas al lu-
gar donde debe residir con la tropa que
este à sus Ordenes.

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uy
Tengo el honor de comunicarlo
a V. E. p^a su inteligencia y efectos cor-
respondientes.

Dios y Libertad Mexico Julio 20
de 1838.

Percecho
Villa de Los Angeles

E. O. Gobernador del Depto
de California.

uy
Filed in Office Depto 26th
1854

Geo: Fisher Secy

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12 11 10 9 8 7 6 5 4 3 2 1

15-

Minister of the Interior.

"C"

Excellent Sir -

Translation of Order from the Minister of the Interior.

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The services rendered to the Nation and to this Department by Captain Don Andres Castillero, in operating effectively to the reestablishment of order and obedience to the Constitutional Laws being worthy of all consideration and reward;

His Excellency the President orders me to recommend them very earnestly to you and to the Department in order that before you should proceed to the granting of the Lands and Islands near this Peninsula agreeably to the laws and the orders of this date you should grant to him that which he shall select in the place nearest to which he is to reside with the troops under his command.

I have the honor to communicate this to you for your information and corresponding objects.

God and Liberty Mexico
July 20th 1838.

Desado.
City of Los Angeles.

To His Excellency the Governor of the Dept of the Californias.

Filed in Office March 3, 1853.
Geo Fisher Secy

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Juan B. Alvarado Gobernador Interino
del Departamento de las Californias

B. P. L
Annexed to
Deposition of
Juan B. Alva
recho Sept.
25. 1854

(Jello)

En Atencion a los meritos del
Señor Capitan D^o Andres Castillero
y teniendo a la Vista la Orden expresa
que dirige a Este Gobierno Departamental
el supremo Gobierno Nacional para que
puedan concederse a los Nacionales las
Islas adyacentes a las Costas de Este
lo y mas particularmente fundado en la
comunicacion oficial que se le dirige
por el ministro del Interior de fecha 20
de Julio ultimo para que de toda preferen-
cia se adjudique en propiedad al Es-
presado Don Castillero la Isla que el
mismo determine; he venido en concederle
la que esta al frente de la Rada de Sta
Barbara conocida con el nombre de Sta
Cruz por los linderos que ella naturalmente
tiene por lo cual se omite señalar su de-
marcacion como vastamente conoci-
da.

En consecuencia mando
que sirviendole de titulo el presente al
Espresado Don Castillero y teniendo se
por firme y Validos se tome Razon en el
Libro a que corresponde y se entregue al
interesado para su resguardo y demas fines
Dado en Monterey a veinte y dos de Mayo
de mil ochocientos treinta y nueve. Esten
driendose este titulo en papel comun por
no habeo del que corresponde.

Juan B. Alvarado
Mano Jimeno

Seo del despacho
Queda tomada Razon de Este Despacho
en el Libro de Asientos de titulo sobre
adjudicacion de terrenos a f^o nueve
Jimeno

Filed in Office
Sept. 26th 1854
Geo. Fisher Secy

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from B Alvarado Governor
protim of the department of the Californias.

Translation
of
Grant.

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In consequence of the Merits of
the Captain Andres Castillero and having
before me the express order directed to this
Departmental Government by the
Supreme National Government in order
that the Islands adjacent to this Coast
might be granted to the Citizens and
more particularly directed in the Official
Communication directed to him by the
Minister of the Interior under the date of
the 20th of July ultimo in order that
with all preference may be granted
in full property to the aforesaid Sr
Castillero the Island which he himself
might select.

In consequence whereof
I have granted to him the Island in
front of the Roadstead of Santa
Barbara known by the name of Santa
Cruz according to its natural boundaries
wherefore the determining of its boundary
is omitted it being sufficiently known.

Wherefore I order that
these presents serving as a Title may be
put from and valid entry whereof to
be made in the proper book and it be
given to the party interested for his security
and other ends.

Dated at Montreux the 22^d of May 1834.

This Title being given on ordinary
paper in the absence of proper paper.

from B Alvarado,

Mont Simons,
 Secy of the Office,

Entry of these presents was made in
 the Book of Titles in relation to grants
 of Lands au Solis &
 Simons.

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Filed in Office March 3. 1853.
 (signed)
 Geo Fisher,
 Secy.

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Don D^o José Ant^o Aguirre

Monterey 22 de Junio de 1839

Muy Don mio y Amigo

Letter of
Governor
Alvarado

Acompaño a V^o el título de
la Pota de St^a Cruz para que haga el uso
que le convenga como apoderado del señ^r
Castillero y como parte interesada que es V^o
en la Referida Pota segun asi me lo dio a
entender el señ^r Castillero antes de su vali
da para mepeo.

Dece a V^o felicitades y
mande a su att^e amigo L. B. O. M

Juan B. Alvarado

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I admit the above to be a genuine
Signature of Alvarado former Governor
of California

W^o R. R. R.
Law Agent

Filed in Office March 13. 1855.

Geo: Fisher Deery

1896
No. 1000 of the series



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Señor Don Jose Antonio Aguirre

Montreux June 22^o 1839.

Translation of letter of Señor Jiv and friends
Gov. Alvarado

Accompany you
the title to the Island of Santa Cruz, that
you may dispose of it as may suit you as
the Attorney of Señor Castillejo, and as you are
a party in interest in the said Island as I
understand from Señor Castillejo previous to
his departure from Mexico.

I desire your prosperity
and am your attentive friend

J. P. S. M.

(signed)

Juan P. Alvarado

When and correct translation
with my hand this 13th
March, 1855 (signed)

Geo. Fisher

Filed in office March 13. 1855

(signed)

Geo. Fisher Grey

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No 805

José Antonio Arguena

vs

The United States

For one undivided half
of the Island of Santa
Cruz.

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

In this case the petitioner has offered in evidence a grant to the whole Island issued by Governor Juan B. Alvarado dated the 22^d day of May, 1839, to one Anas Castillos, which is proven to be genuine, and alleges that he purchased one half of the said Island from the grantee, but has not offered any written evidence of said purchase, but relies upon oral testimony to establish his right to a confirmation. Juan B. Alvarado swears in the case that he sent the grant after it was issued to the petitioner herein, and considered him interested in the Island, says that Castillos told him that Arguena was to have one half of the Island for taking care of it, and says that it was publicly known that Arguena was part owner; says that the statements of Castillos above referred to was made in the year 1838, and before the issue of the grant.

It has been held that under the civil law, that a verbal sale of real estate accompanied with actual delivery of possession and a delivery of title papers would carry with it the right of sale to the purchaser. In this case there is no sale from the original grantee to the claimant, nor no delivery of possession nor of title papers by him but the possession of the grant is accounted for from other hands, and was delivered or sent to him by Gov. Alvarado, as the agent of the grantee and not for

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the purposes of transferring title. There appears to have been a promise on the part of the original grantor to sell a part of the Island to the present claimant in consideration of taking care of the Island. To what extent that care should be exercised we are not informed and there is no proof that he ever extended any whatever.

We cannot see that the claimant has the right either in law or equity to a confirmation.

The claim will therefore be rejected
Filed in office June 5th 1855

(Signed)

Geo Fisher Jcy.

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No. 845

José Antonio Aguirre }
" }
The United States }

Decree

In this case on hearing the proof and allegations it is adjudged by the Commission that the claim of the said petitioner is not valid, and it is therefore decreed that his application for a confirmation thereof be denied

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J. Aug. Thompson }

S. B. Farnell }

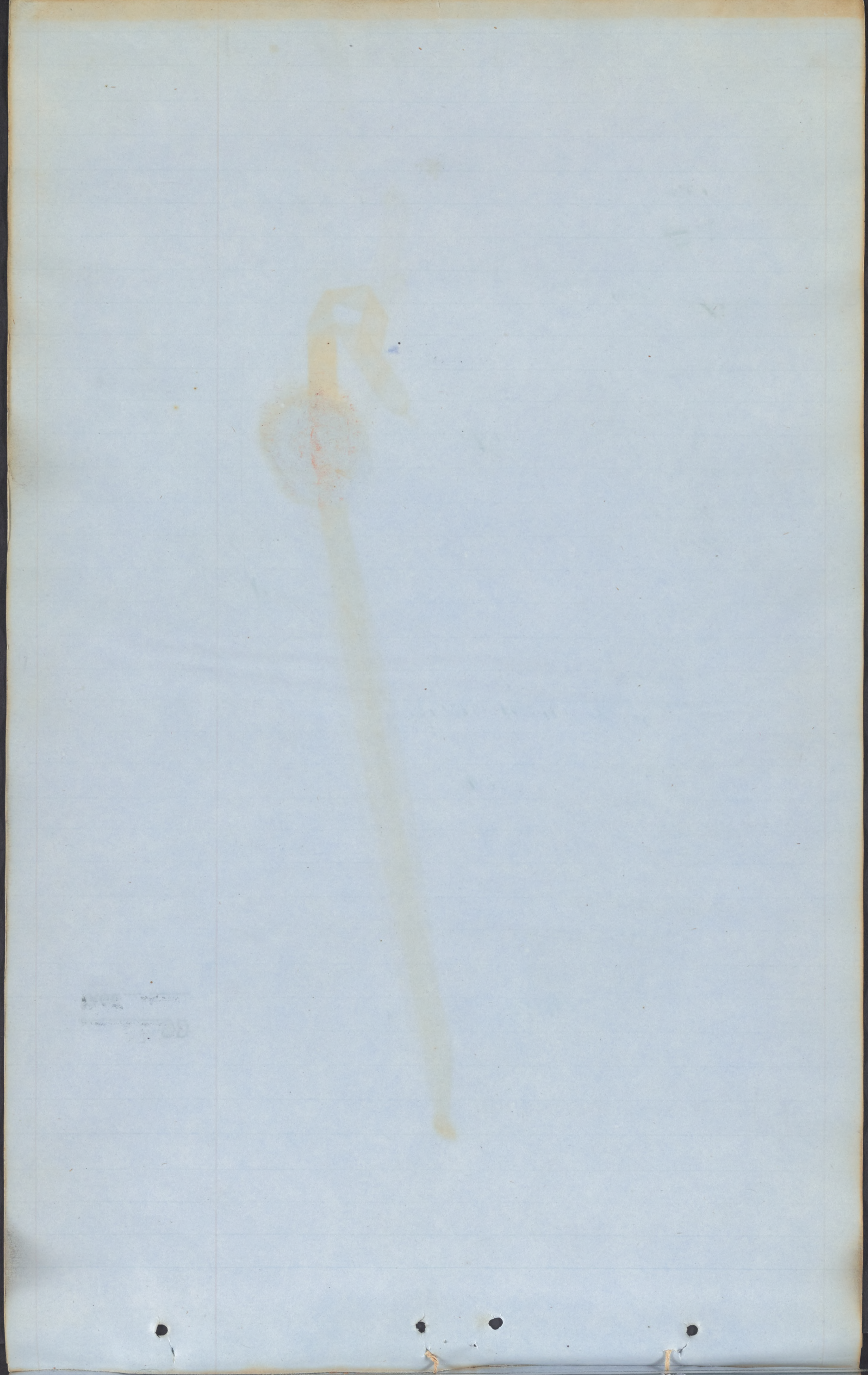
Commissioners

Filed in office June 5th 1885
(Signed) Geo. Fisher Gray

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1864
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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.

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I, *George Fisher* Secretary to
the Board of Commissioners to ascertain and settle the Private
Land Claims in the State of California, do hereby certify the
foregoing *Twenty nine* pages, numbered from
1 to *29*, both inclusive, to contain a true, correct and full Tran-
script of the Record of the Proceedings and of the Decision of the
said Board, of the Documentary Evidence and of the Testimony
of the Witnesses, upon which the same is founded, on file in this
Office, in Case No. *115* on the Docket of the said Board,
wherein

Don Antonio Aguirre is
the Claimant against the United States, for the place known by
the name of "*one half of the Island of Santa
Luz*"

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

Geo. Fisher
Geo. Fisher



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U. S. DISTRICT COURT,
District of California.

No. _____
UNITED STATES,

vs. 34

Josi Antonio
Island of *Cruz*

TRANSCRIPT RECORD

BOARD OF COMMISSIONERS.

In Case

Filed, _____ 1855

Car.
CR.

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Jose Ant^o. Aguirre

vs.

The United States

Appellant

Appellee

Transcript No. 805

Docket No. 334

1/2 of Island of "Santo Cruz"

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You will please take notice that in the above entitled cause decided by the Commission to ascertain and settle the private land claims in the State of California; and a Transcript of which was filed in the office of the Clerk of the United States District Court for the Southern Dist. of California, on or about the 24th day of November 1855. The Appeal in the District Court of the United States for the Southern District of California will be prosecuted by Jose Ant^o. Aguirre the said Appellant

Wm. Norton
Atty. for Appellant

No 334

U. S. Dist Court for Southern
District of California

Jose Anto. Aguirre
Appellant

— vs —

The United States
appellee

Notice of Appeal

Filed Feb. 29 1856

C. E. Case Clerk

by O. Morgan Deputy

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M. Norton Atty for Appellant