CASE NO.

358

SOUTHERN DISTRICT

CAMAJAL Y PALOMAR GRANT

J. J. WARNER

CLAIMANT

LAND CASE 358 SD pgs. 103

253

Daf

TRANSCRIPT

OF THE

PROCEEDINGS

IN CASE

NO. 253.

A. J. Warner CLAIMANT

VS.

THE UNITED STATES, DEFENDANT,

FOR THE PLACE NAMED

Cañada y Palomar

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* thirty first of May, *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 J. J. Warner *for the Place named* "Camajal y Palomar," *was presented, and ordered to be filed and docketed with No.* 253 *and is as follows, to wit:*

(Vide page 5 *of this Transcript.)*

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

San Francisco June 11 1853.

In Case no. 253, J. J. Warner for the place named "Camajal y Palomar", the deposition Agoston Haraszthy, a witness in behalf of the Claimant, taken before Commissioner Thompson Campbell, was filed;

(Vide page 7 of this Transcript)

San Francisco June 14 1853.

In the Same Case the deposition of John Foster, a witness in behalf of the Claimant, taken before Commissioner Thompson Campbell, was filed;

(Vide page 8 of this Transcript)

San Francisco Oct. 3 1853.

Case no. 253, on motion of the Counsel, was ordered to the foot of the Docket.

San Francisco Oct. 22d 1853

In the same case the deposition of Indalecio Covarrubias, a witness in behalf of the claimant, taken before Commissioner Thompson Campbell, was filed;

(Vide page 9 of this Transcript)

San Francisco November 23 1853

In the same case the deposition of John C. Wheeler, a witness in behalf of the claimant, taken before Commissioner R. Aug. Thompson, was filed;

(Vide page 10 of this Transcript)

San Francisco November 26 1853.

In the same case the deposition of Agustin Narazthy, a witness in behalf of the claimant, taken before Commissioner R. Aug. Thompson, was filed;

(Vide page 11 of this Transcript)

San Francisco Dec 10 1853.

In the same case the deposition of John Hamilton, a witness in behalf of the claimant, taken before Commissioner Thompson Campbell, was filed;

(Vide page 14 of this Transcript)

San Francisco November 13 1853.

In the same case the deposition of J. E. Arguello, a witness in behalf of the claimant, taken before Commissioner Alpheus Felch, with document marked "No. 1. A. F." annexed thereto, was filed;

(Vide page 13 of this Transcript)

San Francisco Dec, 15 1853.

In the same case the claimant filed the following Affidavit, to wit;

(Vide page 3-4 of this Transcript)

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San Francisco July 10 1854.

In the same case the deposition of José Joaquin Arteya, a witness in behalf of the Claimant, taken before Commissioner G. D. Burrill, was filed;

(vide page 16 of this Transcript.)

San Francisco Aug. 11 1854.

In the same case the deposition of Brigido Morillo, a witness in behalf of the Claimant taken before Commissioner Peter Solt, was filed;

(vide page 18 of this Transcript.)

San Francisco Aug. 15 1854.

In the same case the deposition of James E. Freman, a witness in behalf of the Claimant taken before Commissioner Peter Solt, was filed;

(vide page 20 of this Transcript.)

San Francisco Aug 25 1854.

In the same case the deposition of Juan Foster, a witness in behalf of the Claimant, taken before Commissioner Peter Solt, was filed;

(vide page 19 of this Transcript.)

San Francisco Sept. 6 1854.

In the same case the deposition of Juan Foster, a witness in behalf of the Claimant, taken before Commissioner Peter Solt, was filed;

(vide page 22 of this Transcript.)

San Francisco Oct. 3d 1854.

Case no. 253 was ordered to the foot of the 2d class cases on the trial docket.

San Francisco Oct. 19 1854.

In the same case the deposition of Jesus Moreno, a witness in behalf of the Claimant, taken before Commissioner Peter Solt, was filed;

(vide page 23 of this Transcript.)

San Francisco Nov. 14 1854.

Case no. 253 was ordered to the foot of the 3d class cases on the Trial docket.

San Francisco Dec. 19th 1854.

Case No. 253 was ordered to be placed at the foot of the 4th Class Cases on the Docket.

San Francisco Dec. 19th 1854.

In the same Case the deposition of Thomas C. Larkin, a witness in behalf of the Claimant taken before Commissioner Peter Solt, was filed;

(vide page 25 of this Transcript)

San Francisco, March 13th 1855.

In the same Case the depositions of James Jackson and Pio, an Indian, witnesses in behalf of the Claimant, taken before J. Tompson Burnell a Notary Public in and for the County of Los Angeles, State of California, were filed;

(vide pages 33 & 35 of this Transcript)

in accordance with the following Stipulation, viz:

(vide pages 5 & 9 of this Transcript)

Case No. 253 was submitted on briefs and taken under advisement by the Board.

San Francisco July 17th 1855.

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

(vide page 61 of this Transcript)

and the following order was made, viz:

(vide page 62 of this Transcript)

Petition

Before the Hon. Commissioners on private Land Claims in the State of California

The petition of J. J. Warner respectfully represents that he claims by virtue of a grant from the Mexican Nation certain tracts of Land in the County of San Diego in the said State known as the Mesa of Camajai and the potreros of the Palomar as the same is described in the thereof and accompanying Map or diseno.

That said Land was granted to your petitioner by Pio Pico governor of California and authorized to grant lands in the name and on behalf of the Mexican Nation appears by title therefor given to your petitioner by said Pio Pico on the 1st day of August 1846.

That your petitioner went into possession of said tracts of land by virtue of the decree of Concession, and that he has continued in the possession and occupation of said lands except when disturbed by the prevalence of in the County or by the incursions of hostile Indians.

Your petitioner has no means of knowing at this present time whether said grant was or not confirmed by the Departmental Assembly. A copy of the Grant or Title to your petitioner is herewith filed and prayed to be taken as part of this petition. The Original will be produced and proofs as may be required.

The other papers & documents referred to and relating thereto exist in the Archives of the former government of California now in possession of the Surveyor General of the United States for the State of California.

The petitioner relies on the above documentary Evidence and produce other proof should it be required by the Board.

J. J. Warner

Filed in Office May 31st 1852
Geo. Fisher Secy

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Recorded in Record of Private Grants Vol 1 p 120 & 21. Geo. Fisher Secy

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Deposition of A Haraghty

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San Francisco June 11th 1853 No. 253

On this day before Wm. Thompson Campbell came Augustus Haraghty a witness on behalf of J. J. Warner Claimant in petition No 253 and was duly sworn, his Evidence being given in English

The U S Special Land Agent was present

Questions by Claimant

1st Question. What is your name age and place of residence

Answer. My name is Augustus Haraghty and I reside in the County of San Francisco

2d. Question. Are you acquainted with the Rancho Mesa de Camajas y El Paloma, if yes, state all you know about the Occupancy of the same

Answer. I have known said Rancho since December 1849. Mr. Warner has been the reputed owner of said Ranch since that time. I have known Capt Warner to be in possession of said Ranch, and know how long, have no knowledge of any other person occupying it, There was a house on the ranch, but no person, resided in it. he had stock on the ranch. The stock consisted of Cattle and horses

The Rancho joined the Ranch of San Jose. The number of Cattle on the three Ranchos claimed by Capt. Warner were two hundred and fifty and about two hundred horses. This was the stock he had when the revolution broke out. The Cattle he lost but the horses were saved saved

The Atty for the U. S declines to cross Examine

In reply to further interrogatories by Atty for claimant the answers.

The ranch is not well watered It is watered by a Spring. About 15 or 20 Acres near the Spring might be irrigated The soil is pretty rich, rather rolling, close

above the buildings the soil is rich and the grounds are distant from the buildings is force of presence

Augustus Haraghty

Sworn to and subscribed before me this 11th day of June A.D. 1853

Thompson Campbell Com.

Filed in Office June 11th. 1853

Geo. Fisher Secy

Recorded in Ev. B Vol. 3 p 4

Geo. Fisher Secy

Deposition of John Forster

San Francisco June 14th. 1853 No 253

On this day before Com. Campbell came J Forster a witness on behalf of the claimant J.J. Warner petition No. 253 and was duly sworn, his Evidence being given in English

The U. S Apocate Geo Agnew is present

Questions by claimant

1st Question. What is your name age and place of residence

Answer. My name is John Forster, age 38 years, place of residence San Juan Capistrano Los Angeles County State of California.

Question 2d. Are you acquainted with the Rancho Mesa de Camajay y de Polaman, if so state all you know about the occupancy of the same and by whom.

Answer. I am acquainted with the Ranch I know from common report that Mr. Warner, Repe his stock on the Ranch mentioned in the question, as former owners of the same ranch were in the habit of doing.

J. J. Forster

Subscribed and sworn to before me this 14th day of June A.D. 1853.

Thompson Campbell Com

Filed in office June 14th. 1853

Geo. Fisher Secy

Recorded in Ev. B Vol. 3 p 6 Geo. Fisher Secy

Deposition of J. M. Covarrubias

Office of the Board of Commissioners &c. &c. &c.

This day before Wm. Thompson Campbell came Jose Maria Covarrubias a witness in behalf of Claimant J. J. Warner No. 333 who after being duly sworn deposed as follows.

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What is your name age and place of residence

My name is Jose Maria Covarrubias, I am forty five years of age and I reside in Santa Barbara County

Were you in Los Angeles in July and August 1846 and if so what Government was as that time exercising Jurisdiction at that place?

I was at Los Angeles in the month of August 1846, the Country was at that time under the Mexican Government Pio Pico being Governor of California

Was there on the 10th of August 1846 any Military forces of the United States of America, or any other foreign power within that portion of California lying South and East of Santa Barbara

There were no foreign Military forces at that time at such points.

Was the Mexican Government of California at that time exercising its jurisdiction, and functions over that portion of California in its usual form without obstruction or interference from any foreign power.

Said Mexican Government did exercise its jurisdiction according to its usual forms without interference or obstruction from any other Government at that time.

Were you at the time above specified intimately conversant with the affairs of the Mexican Government in California and and were you at that time an Officer or have you been previously under the Government

I was intimately acquainted with the affairs of said Government. I was connected with the Office of Secretary of the Government

of the Territory of California, as well when it was a Territory as a State, and Department, and at the time above stated, I was the Secretary of the Departmental Government of California, but did not at that time Exercise the duties of my Office, there having been a Secretary, ad interim of the Departmental Government at the same time who acted in my place

A Special Law Agent objects to all the foregoing evidence, on the ground that it is mere an Expression of opinion as to matters which will be before the Board for their decision

J. M. Covarrubias

Sworn to and subscribed before me this 22nd day of October A.D. 1853.

Thompson Campbell Com:

Recorded in Ev. B Vol 3 p 280

Geo. Fisher Secy

Filed in Office Oct. 22d 1853

Geo. Fisher Secy.

Deposition of Jno. O'Wheelen

Board of Commissioners &c &c

San Francisco Nov. 23. 1853

This day before Com. R. Acey Thompson came John O'Wheelen a witness in behalf of Claimant J J Alvarez Petition No 253 who after being duly sworn deposed as follows

Testimony in behalf of Claimant

Present J. J. Alvarez Claimant and R Greenhow Esq. Special Law Agent

Witness states his name to be John O'Wheelen age twenty Eight years and residence Los Angeles.

Question by Claimant. Do you know the Ranch called Mesa de Camajas y el Polvaron claimed in this Case, if so, state what you know of its locality with reference to the Valle de San Jose

Answer.

I know the position of the Mesa de Camajal lying North of the Cañada de Paja. I went on it from the Valle de San Jose. The boundary of the Valle de San Jose is very precipitous and I

ascended about a mile and a half before I got where the Land which is embraced in the tract called Mesa de Camayal or Palomar. It was about three miles from the Valle de San Jose, to where Mr. Ulmar then had his Corral and Stock on said Ranch The Mesa de Camayal is separated from the Valle by the precipitous hills before spoken of

That portion of the tract referred to as lying North of the Name of Canada de Pala was known by the name Palomar. Mr. Ulmar had at the time referred to which was in May or June 1850, a house on the place which was occupied by his Servants, Corral and a Stock of horses and mules I was there and got some some Stock of my own, which the Claimant Ulmar had been keeping for me on said Ranch

When I were there often ascending the Mountain I passed for some distance over an Open level Country in a Westerly direction until I came to a long Valle which I travelled in about half a mile to the Corral

John A Wheeler

Sworn to and subscribed before me Nov. 23d 1853

R Atcy Thompson Comr

Filed in Office Nov. 23. 1853

Geo. Fisher Secy

Recorded in Rev. B Vol 3 p 438

Geo. Fisher Secy

Deposition of Atcy. Haraghty

Board of Land Commissioners U.S.

This day before Comr. R Atcy Thompson came Augustus Haraghty a Witness in behalf of Claimant J. J. Ulmar petition No. 253 being duly sworn his Evidence being in Spanish was interpreted by the Secretary as follows

Testimony for Claimant

Present J. J. Ulmar in person and R Greenhow Esqr. Opte Law Agent

Witness states his name

is Augustin Haraghy age Forty One years and residence San Francisco County Cal.

Question by Claimant. Do you know the road from Santa Isabella to the Valley de San Jose and if so state if you know the rocks described in the petition on this grant as its beginning point described from the spring at the head of the valley of Cuenicito.

Answer. I know Said Road and also acquainted with the rocks referred to lie a few rods from the road where the mountain comes close up to the road and a few rods south of an old deserted Indian Village and close to the head spring of the Cuenicitos. Those rocks are noted and well known objects. The Indian Village spoken of is on the East of the road.

Question by same. State if you know the distance from the point described in your last answer, to the West limits of the "Mesa" or table land known by the name of Camayal.

Answer. As near as I can judge from travelling over it the distance is about three miles.

Question by same. Do you know the road running along the brook from the Valley of San Jose towards Polvedero so state the distance from the Western limits of said Valley to the present point where the road crosses said brook.

Answer. It is from a mile to a mile and a half. The said brook passes through a close canaden, in some places the mountains close in near the brook in others receding out near the said crossing of the brook there are the remains of an old Indian Village with old enclosures of the Lances they tellers and some small fruit trees.

Augustin Haraghy

Sworn & Subscribed before me Nov. 26. 1853

R. Aug. Thompson Comr.

Filed in office Nov. 26, 1853

Filed in Office Nov. 21st. 1853
Geo. Fisher Secy

Recorded in Ev. B Vol 3 p 448
Geo. Fisher Secy

Deposition of S. E. Arguello

Office of the Board of
U. S. Land Commissioners }
San Francisco December 13. 1853

This day before Commissioner Alpheus Felch came S. E. Arguello a witness on behalf of Claimant J. J. Warner Petition No. 253 and being duly sworn his evidence being in Spanish was interpreted by the Secretary as follows.

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Questions by J. J. Warner Claimant

1st Question. What are your name age and place of residence.

Answer. My name is Santiago E Arguello, my age is forty years and I reside at San Diego in California.

2d Question. Look on the document now here presented to you marked Exhibit No. 1 with the initials "A F" purporting to be a grant to Juan Warner by Pio Pico and annexed to this deposition and state whether you are acquainted with the handwriting of Pio Pico and Jose Matias Moreno and if yes, whether the signatures on said paper purporting to be theirs are their true and genuine signatures.

Answer. I have examined said document and recognize the signatures above mentioned as the true and genuine signatures of said Pio Pico and Jose Matias Moreno. I have often seen them write and am acquainted with their handwriting and signatures —

Santiago E Arguello

Mr. Greenhow Osceola Lane Esqre was present at the taking of this deposition but proposed no interrogatory to the witness

Recorded in Ev. B Vol 3 page 579
Geo. Fisher Sec

Subscribed and sworn to before me this thirteenth day of December 1853

Alpheus Felch Comr.

Filed in Office Dec. 13th 1853. Geo Fisher

Deposition of Jno. Hamilton

Office of the Board of Land Commissioners

San Francisco December 15th 1853

This day before Commissioner Thompson Complainant Came John Hamilton a witness in behalf of Claimant of Alamo. Petition No. 253 he being duly sworn deposed as follows

1 Question. What is your name age and place of residence

Answer. My name is John Hamilton I am thirty one years of age and reside at Benicia

2d. Quest. Are you acquainted with the roads, Country and Indian Villages in the vicinity of Alamos Ranch situated in the County of San Diego

Answer. I am pretty well acquainted with that region of Country and those places. In December 1851 I passed through from San Pedro to the Valley of the Eagles on the Coast - thus entering the Ranch of Mr. Mr. Alamo by the South and travelling in a direction North of East one of it through the Valley of San Isidro returning in the Month of January — From the Eagles I struck the road from Alamos Ranch to Temecula - ~~[illegible]~~ about four miles North West from an Indian Village Ahuanga. I passed through two places called Ahuanga, and I believe the One further up has been called Canotrio and is also called Ahuanga and that is the place lying four miles to the South East of the point above referred to, where I struck the road. The place where I struck the road is also called Ahuanga

3d Question. Look on the tracing Copy of the Expediente filed in this Case 254 and marked T.C. No. 1 and tell whether the place marked on the map, which is a part of said Document and called Ahuanga is the same place which you have described as Ahuanga Nova, and

and whether its location on said map comes
ponds with the location you have described
it as Occupying?

Answer. When I travelled
through there I took topographical notice
of the country and therefore I am pretty well
prepared to say that this map as far as that
place is concerned is good, and that is the
place I have called Ahuanga Chowin
by evidence just given.

4th Question. Look on the
same map just shown you and state if
you place the point San Jose where it is
marked on said map, and if so, state
what you saw at that point according
improvements

Answer. On the sixth day of
January 1852 I passed that point in Company
with J. J. Warner and Doctor Ogencoff, and
and was joking Mr. Warner on account of the
position in which he had placed his house,
telling him he had picked out the bleakest
portion of his ranch to put his house on
he told me it was not his taste had had
directed him in the matter, nor the farming
advantages of the position, but gave me
some other reason which I do not now
recollect. He then pointed out to me the
place which had been his choice, and there
were at that place, the ruins of an adobe
house, and if he was going to build at all
that would be the place
The was appeared to have been built a number
of years before that time, they walls were in the
immediate vicinity of the point San Jose

At this time I was acting
as interpreter and secretary for the Indian Agent
Doctor Ogencoff, I acted as Recorder and interpreter
of the Council of war ~~xxxx~~ that executed under
Major Heitzman's orders from Indians of San Jacinto
and Agua Caliente for the burning of Mr. Warner's
Ranch in November 1851

5th Question. What did the Indians

say at that time in relation to Mr Wanner living at that place

Ans. They said that they had no cause for violence towards Mr. Wanner and throw the blame on an Indian called Juan whose objections was a political one

Upon cross Juan Ayne present

J Hamilton

Sworn to and subscribed this 10th day of December A.D. 1853

Thompson Bumpless Com

December 10th 1853

It is agreed that this deposition may be used in Case No. 254 in the same manner as if it had been taken in that case

J. J. Warner. } R Greenhow & Pole
Claimants } Juan Ayne

Filed in Office Dec. 10th. 1853

Geo. Fisher Secy

Recorded in Ev. B Vol 3 p 506

Geo. Fisher Secy

Deposition of J. J. Ortega

Office of the Commissioner at Los Angeles California

G. Thompson Benicia

Before me G Tompson Benicia Commissioner duly qualified for the taking of testimony to be used before the Board of Commissioners to ascertain and settle the private Land Claims in the State of California personally appeared Jose Joaquin Ortega a witness in behalf of J. J. Warner Claimant for the Lands named Mesa of Temajal and Palomar numbered on the Docket of the said Board with No 253 who upon oath declared and saith as follows.

Questions asked by Counsel of Claimants

Question 1. What is your name age and place of residence?

Ans. My name is Jose Joaquin Ortega, I am fifty three years of age and I resided in the County of San Diego

Question No. 2. Are you acquainted with the place or places known as Mountain or Mesas of Camajal and Palomar, if so, how are they divided or separated one from the other.

Answer. I know these places the same Arroyo there being by bed a one from the River of San Luis Rey, and which Arroyo is situated in a deep ravine commencing above the Valley of San Jose and running nearly West which divides Camajal from Palomar

Question 3rd How are Camajal and Palomar later together bounded on the East

Answer. By the Valley of San Jose.

Question 4. How are they bounded on the North, South and West

Answer. On the North by the lands of Chuchuyo and the Road from San Jose to Temecula, On the South by Santa Isabel, On the North West by the Mountain Palomar of which for a league and a half is very rough.

Question No. 5. Are the Mesas or Table Lands known as Camajal and Palomar high above the Valley of San Jose and the Ranchos of Santa Isabel & Paloma

Answer. Yes they are and on the West they are very difficult of access

Jose Joaqn. Orlega

Sworn to and subscribed before me this 29 day of June A.D. 1854

G. Lompson Duncan Com

Filed in Office July 10th 1854
Geo. Fisher Secy

Recorded in Bo. B Vol 5 p. 95
Geo. Fisher Secy

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Deposition of B Morillo

United States of America }
State of California }

San Francisco Augt 10. 1850

This day came before Peter Soll Commissioner in taking testimony to be used before the Board of U. S Land Commissioners in San State Brigido Morillo a witness on behalf of the claimant J. J. Warner in Case No. 258 on the Docket of said Board, and said witness being sworn, deposed in Spanish which is interpreted by the interpreter to said Board as follows.

The U. S Special Land Agent is present

Questions by claimants Counsel

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

Answer. My name is Brigido Morillo, my age 55 years my residence Los Angeles County California.

2nd Question. Are you acquainted with the tract of Land known as Camajal y Palomar

Answer. I am

3rd Question. Are you acquainted with the place known as Canesal of the Valley of San Jose and the Cañada of Pamo.

Answer. I am acquainted with them.

4th. Question. From the foot of the Mountain at the Canesal over the table lands of Camajal Westerly to the commencement of the descent to the Cañada of Pamo what is the distance?

Answer. It is a league and a half a little more or less.

5th. Question. What is the character of the Mountain side between the table lands of Camajal and the Cañada and Valley on the West?

Answer. The whole line of the Mountain on the Western side towards Pamo is very steep and difficult of access

6th Question. Have you ever lived at

at the distance of similar distance from any

at the Rancho of Santa Isabel if you know long and how was your employed and does Santa Isabel adjoin Temecula

Answer. I have lived at Santa Ysabella 8 months with my family I was Overseer of the Rancho which belongs to the Mission of San Diego, and it does adjoin Temecula

Brigido his X mark Morello

Subscribed & Sworn to before me on this 10th of ~~April~~ August A.D. 1854

Peter Soule Comr &c

Filed in Office Aug 11. 1854

Geo. Fisher Secy

Recorded in E B Vol 5 p 269

Geo. Fisher Secy

Deposition of Mr. Foster

United States of America
State of California } ss
San Francisco Aug. 28. 1854

This day Came before Peter Soule Comr. in taking testimony to be used before the Board of U. S. Land Commissioners in said State John Foster Attorney on behalf of the Claimant J. J. Warner in Case No. 250 on the Docket of said Board - and said Attorney being duly sworn deposes as follows

The U. S Associate Land Agent is present

Questions by Cornelius Ally for claimant

1st Question. What is your name age and residence?

Answer. My name is John Foster My age 38 years, My residence in Los Angeles California

2d. Question. Are you acquainted with the Ranchos of San Jose del Valle and "Agua Caliente" and the roads leading thereto situated in San Diego County

Answer. I am acquainted with both of said Ranchos and the roads leading to them.

3d Question. What is the distance from the house of Pablo Apis deceased in Temecula

to the Indian Village called Ahuangu on the road Temecula to Agua Caliente

Answer. I call it about 9 or 10 miles

4th Question. From the house in the place called Pala on the river of San Luis Rey which is the distance by the road along said river to the point where said River leaves the valley of San Jose?

Answer. About 18 miles

Crop Examined by U. S Associate Law Agent

1st Question. How do you know these distances

Answer. I judge from having frequently travelled along the roads between the points named and speak from the best of my judgment by such means.

John Foster

Subscribed and sworn to before me on this 28th day of August A.D. 1854

Peter Sole Comr &c

Filed in Office Aug 28. 1854

Geo. Fisher Secy

Recorded in Ev. B Vol 5 p 313

Geo. Fisher Secy

Deposition of Jas. E Freeman

United States of America
State of California } ss

San Francisco Aug. 15. 1854

This day came before Peter Sole Commissioner for taking Testimony to be used before the Board of U. S. Land Commissioners in said State James E Freeman a witness on behalf of the claimant J. J. Warner in Case No. 353 On the Docket of said Board and said Witness being sworn deposes as follows

The U. S Law Agent is present

Questions by Claimants Counsel

1st Question. What is your name age and residence?

Answer. My name is James E

Freeman, my age 38 years, my residence San Francisco California

2d Question what is your Occupation?

Answer. I am a Deputy Surveyor of the United States under the U. S Surveyor General for the State of California.

3d. Question. Did you Survey the San Bernardino Meridian, if so did you cross the Road from Temecula to San Jose del Valle?

Answer. I surveyed 80 miles of the South line of said Meridian and crossed said Road with said Meridian

4th. Question. How far is it by the Road from the residence Pablo Apis in Temecula to the point where said Meridian crosses said road?

Answer. I suppose it to be about 10 or 11 miles

5th. Question. How far is it from the Rancho of Pala due East to said Meridian?

Answer. It is Seven miles

6th. Question. Did you cross with said Meridian the South fn 1/2 of the River of San Luis Rey, if so, state how far the point of said crossing is from the Rancho of Pala and in what direction?

Answer. It is Seven miles Eastery and 7 miles Southerly which will make it about 9 miles on a direct line in a South Eastery direction.

7th. Question. Describe the character of the Country from the point where said Meridian crosses said Road running from Temecula to San Jose del Valle along said Meridian 35 miles, and the Country lying East of said Meridian along said portion?

Answer. The general character Country along said line South of the point is very Mountainous broken Land covered with Timber in the heads of the Rivers There is no good Some Except Narrow Steps

Where the incentaigns of the Valley run up the Forks of the San Luis Rey. I have not been much East of Suis line but as far as I could see, the country appeared to be very Mountainous.

The description I have given of the Lands along Suis line applies to all the distance South from Suis House to Sutens Ranch. I am not sure it is quite 25 miles but it is within 2 or 3 miles of that distance.

James E Freeman

Subscribed and Sworn to before me on this 15th day of August A.D. 1854

Pelu Soll Commissioner

Filed in Office Aug 15. 1854

Geo. Fisher Secy

Recorded in Ev. B Vol 5 p 289

Geo. Fisher Secy

Deposition of John Forster

United States of America }
State of California } ss:

San Francisco Sept. 5th 1854

This day Came before Pelu Soll Commissioner for taking testimony to be used before the Board of U. S Land Commissioners in said State John Forster a witness on behalf of the claimant J. J. Warner in Case No 253 On the Docket of said Board, and said Witness being sworn deposes as follows

The U. S special Land Agent is present

Questions by claimant in person

1st Question. What is your name age and residence?

Ans. My name is John Foster my age 38 years, my residence in Los Angeles California

2d Question. Look at the written copy of the Expediente now shown to you marked Expediente "A P L" and filed in this Case, and state whether you have Examined the Original thereof in the Office of the U. S. Surveyor General for the State of California

If you, are you acquainted with the handwriting of the persons whose names appear signed thereto and if you state your means of knowledge and whether their signatures to said original documents wherein they respectively occur thereto are genuine

Answer. I have Examined the said Original Expedients in said Surveyor General's Office and I am acquainted with the handwriting of Pio Pico Jose Antonio Pico J. Guerra Jose Mateus Moreno, Jose Ramon Argüello Jose Antonio Estudillo, and Juan Munoz Osuna, having seen them all write, and I believe their signatures respectively wherever they occur in said Original documents are genuine

John Forster

Subscribed and sworn to before me Sept. 1854

Peter Soule Com. &c

Filed in Office Sept. 6. 1854

Geo. Fisher Secy

Recorded in Ev. B Vol 5 p. 339

Geo. Fisher Secy

358 SD
PAGE 23

Deposition of Jesus Moreno

United States of America }
State of California }

San Francisco Oct. 16 – 1854

This day Came before Peter Soule a Commissioner for taking testimony to be used before the Board of U. S. Land Commissioners in said State Jesus Moreno a witness on behalf of Claimant J. J. Warner in Case No. 353 on the Docket of said Board and said witness being sworn deposes in Spanish which is interpreted by the interpreter to said Board as follows

The U. S Land Agent is present

Questions by Claimant

1st Question. What is your name age and residence?

2d Question. Do you know the place called Jumagua y Palomar" if you, state what you know respecting its occupation by the Claimant in this Case.

Answer I know the place named. I was one of the assisting Alcaldes in putting possession of the Rancho called Paloma to Jose Serano and others in the fall of 1840 which Rancho adjoins the place known as Palomar. At that time I saw the horses of J. J. Warner on the Mesa Paloma, there was also a corral and a small house on the same. I was on that place again in the month of June or July next following the arrival of the American General Kearny in California I went there in company with a Frenchman for the object of purchasing some cattle at that time which I think was in 1847 Mr Warner had his horses on that place there was a corral and a small house where his Barqueros (Arrieros) resided and took care of his horses

3d. Question. Where did J. J. Warner the claimant in this case reside and where was his family at the times mentioned by you in your previous Answer

Answer. Mr Warner resided with his family in the Valley of San Jose an adjoining Rancho

Jose de Jesus Moreno

Subscribed and sworn to before me on this 16th day of October A.D. 1854

Peter Loll Comr. &c

Filed in Office Oct. 19 1854
Geo. Fisher Secy

Recorded in Co. B Vol 5 p 473.
Geo. Fisher
Secy

Deposition of Thos. O Larkin

United States of America }
State of California } ss.

San Francisco. Dec. 14th 1854

This day came before Peter Soule Commissioner for taking testimony to be used before the Board of U. S. Land Commissioners in said State Thomas O Larkin a Witness on behalf of the Claimant J. J. Warner in Case No. 253 on the Docket of said Board and said Witness being sworn deposes as follows,

The U. S Surveyor is present

Questions by Claimants in person.

1st Question. What is your name age and residence?

Answer. My name is Thomas O Larkin, my age 52 years, my residence San Francisco California

2d. Question. State where you resided and what was your occupation during the months of July and August 1846?

Answer. My place of residence was in Monterey I was a Merchant and trader

3d Question. State whether you held during that time any Office, if yes, what Office?

Answer. I held the Office of United States Consul of Upper California and was appointed the Pres. and was a Confidential Agent for Upper California

4th Question. Did you in either of your Offices take any active part in bringing about the change of government and the raising of the American Flag in California

Answer. Commodore Stockton was in Monterey some five or six days before he hoisted the American Flag there, during those days I was in frequent consultation with him upon the subject — On the 6th of July I was with him all day and upside in Monterey and the proclamation and all day when he published on the following day when I took Military possession of Monterey.

At Commodore Stock's request I sent Couriers to the different towns and stations in the North, informing the people of those places of what has been done and urging them to raise the American flag in the respective towns and places. At his request I also wrote to Capt Fremont to raise volunteers in case of his arrival. Commodore Stockton arrived and Commodore Stock gave up the Command to him as he (Stock) was obliged to proceed to Washington City. The Expenses of the Couriers I sent, were paid by the State Department of the United States and not out of Navy appropriations.

7th Question. State you on the 7th of July 1846 any knowledge of the Existence of War between Mexico and the United States prior any Source

Answer. I have not.

8th. Question. From your intimate intercourse as Confidential agent, a Consul of the United States, with Com. Stock would you probably have been informed by him, if he had Known of the Existence of that war?

Answer. I certainly should have been.

9th Question. Did Commodore Stockton proceed to Los Angeles soon after his arrival in Monterey, if so did you accompany him, and if so in what capacity?

Answer. So soon as Commodore Stockton had made arrangements to defend the place at Monterey, he proceeded to the Southern parts of California in the Frigate Congress. I went with him at his request on account of my being a United States Officer and well acquainted with the country and the inhabitants. We came to Anchor in San ~~Francisco~~ Pedro about the first week in August.

8th. Question. What negotiations and with ~~whom~~ whom were they held did Commodore Stockton make while he was in San Pedro?

Answer. After taking San Pedro and placing a garrison there, we found that the Mexican authorities were in the Capital. Los Angeles – Two Commissioners (I believe they were Don Pablo de la Guerra and Jose Maria Flores, De la Guerra was a Second Officer in the Custom House, and Flores was a Captain in the Mexican Army) came down from Los Angeles to San Pedro with a commission to commodore Stockton from Gov. Pio Pico or Genl Castro, or both of them. And Commodore Stockton appointed myself and his Lieutenants of the Regular Corps as Commissioners to meet the Mexican Commissioners.

We all met in the Cabin of said Frigate. The Mexican Commissioners stated to Commodore Stockton that they came to negotiate about the surrender of the Country – They proposed several conditions and the Commodore proposed such & such & I believe all the conditions were agreed to one made by the Commodore, which was that he required that the Mexican Officers should not only lower the Mexican Flag but that they should also raise the American Flag.

I wished the Commodore to waive that condition, but he was firm in requiring it, from the fact that he was not sure that actual war had begun between the two Nations.

There was no treaty negotiation entered into, and De la Guerra and Flores returned to Los Angeles and Lieutenant Gray of the Regular Corps acted as interpreter on the occasion – Com. Stockton stated that time had landed all his available forces for the purpose of marching up to Los Angeles a day or two after the departure of the Mexican Commissioners while Stockton was maneuvering and shelling his forces on shore a Courier arrived from Los Angeles with a communication for him from Genl. Castro – The substance of the letter was that all negotiations have been broken off & he should place himself

in the best attitude of defence within his power to resist the invasion of the Americans. He was in rather a tone of defence. No answer was returned by Stockton and he renewed his preparations for a descent upon Los Angeles

About the day the forces marched from San Pedro, Stockton sent me with a flag of truce, bearing a letter to Genl Castro which was about the 10th of August. The purport of my verbal was, waiving the requirement that the Mexicans should hoist the American Flag and offering an opportunity to open new negociations.

When I arrived in Los Angeles I found most of the Mexican forces had disbanded and Castro had left the place. The Alcalde of the Town promised to send the letter I bore to Genl. Castro but I do not know whether he ever did it. Castro had been gone two days, and the Alcalde said he knew where he was.

When I returned I found Stockton and his forces at Temple's Ranch nearly halfway between San Pedro and Los Angeles. They entered and took military possession of Los Angeles on the 13th of August.

9th Interrogatory. Did Commodore Stockton receive and treat with those Commissioners of whom you speak as Commissioners of the Mexican Government?

Answer. He did.

10th Interrogatory. Where were the Mexican Military heads quarters in California on the 17th of July 1846?

Answer. They were at or near San Juan Bautista in Monterey County.

11th Interrogatory. At what time was the Country in and about Los Angeles and South of that taken possession of by the American forces

Answer. Immediately after the 13th of July 1846.

August

12th Question. Did you they continue to hold that possession from that time forward?

Answer. They held it uninterruptedly for about two months or perhaps less than that time after that the Mexicans took possession and by the month of November 1846 they had the possession of all the country South of Monterey.

Stockton took Los Angeles on the 8th & 9th of January 1847 – or at least the Americans took it and in the meantime Genl. Kearny had entered the country and about the 10th or 15th January Don Andres Pico in command of the Mexican forces and Col Fremont in command of a force of the American forces entered into a treaty of capitulation at Cahuenga and from that time the country was in the undisputed possession of the Americans

Cross Examined by the U. S Special Land Agent.

1st Question. On what day were these instructions sent by your Country to raise the American Flag in the different Towns in California?

Answer. About noon on the 7th of July 1846 – I only sent them to the North of Monterey

2d Question. State as accurately as you can the purport of those instructions and the reason given in them, why the American Flag should be raised

Answer. I do not recollect distinctly the terms used, the reason given for raising the Flag was that Monterey the principal Sea port in the Department had fallen into the hands of the Americans, and the object was also to secure the cooperation of Capt. Montgomery in command of the Sloop of War Portsmouth then lying in the harbor of San Francisco and also of Col Fremont who was understood to be somewhere

in the interior & in command of some troops

3rd Interrogatory. On what day did Commodore Stockton hear of the Existence of the War between the two Nations?

Answer. It was about the 18th or 20th of August 1846 that Captain Price of the U. S. Navy came down by land from the North to Los Angeles with the News of the War

4th. Interrogatory. If Stockton did not hear of the War on what Authority did he raise the American Flag on the 7th of July 1846 at Monterey?

Answer. I cannot say precisely on what Authority it was done, about daylight or Sun rise on the morning of the 6th. of July Comd. Stockton sent for me he came immediately on board of his Ship the Savannah. I was in his Cabin within an hour or two when he told me he would have to take the Country. He was aware of the battle at Point Isabel with Genl. Taylor and he had no doubt there was War between the two Nations — under the circumstances, he said he would be blamed at Washington for doing to much or too little, and he preferred being censured for doing too much, and he would raise the Flag and take the Country.

Believe he had refrained from acting sooner, because I had given him reason to think that the Mexican Authorities in California would recede with him without the necessity of open hostilities on his part which he supposed was a better plan, if no War Existed, than to take the Country as Comd. Jones did in 1842. and he Compelled to retreat.

My reason for recommencing Miles and preventing Mexicans rose from the distracted State of the Country and I wished to do all I could to restore and preserve order.

5th Question. Do you know of Either Commodores Stout or Stockton receiving any Official dispatches from Washington at any time, if you, what was the purport of those dispatches and when were they received.

Answer. I never knew of Stout receiving any Stockton received dispatches, Either when Parson Price arrived as I have mentioned a other that time. I knew their purport at that time, but I do not now remember what it was - When I say Stout received None I mean he received none which Carried information of the Existence of the War, or which were sent from Washington after the declaration of the war.

6th Question State when Commodore Stout arrived in California, from what place last and how long he worked he coming from San Pedro

Answer. He came into the Harbor of Monterey On the 1st of July 1846 from Magellan I should think his passage would have occupied from 25 to 30 days

7th Question, Could the Mexican Authorities in the Southern part of the State negotiate for the Surrender of the Country if they had no knowledge of the actual Existence of War

Answer, Although they had no knowledge of the war they supposed the Commodore had, and they were Compelled to negotiate, or Surrender at discretion as they were invaded and not able to resist successfully

8th. Question, State the amount position and Commander of all the Mexican forces in the Country on July 7th 1846?

Answer. I should think that On that date or shortly prior thereto the number of Soldiers was under 300. Jose Castro was Commandante General of the Country, he with One or two hundred Soldiers was in Santa Clara County M. G. Vallejo was Second in the Military Command he was

stationed in the Town of Sonoma with from 50 to 100 Soldiers. On the 7th of July the Town of Sonoma was taken by the Bear Party and the Mexican Forces at that place were disbanded and dispersed, and Vallejo and two or three of his Officers were prisoners to that party, either at Sullen's Fort or on their way there.

There were one or two Mexican Officers with some ten or twenty Soldiers in the Presidio of San Francisco. So Pio Pico was at or near the Mission of San Luis Obispo with two or three hundred men, Soldiers and Citizens Mixed together but all in Arms.

9th Question objected to by Claimant

9th. Question. From your knowledge of the Country and the State of things, was Upper California in a Condition to make a successful resistance to the American Forces and at what time do you Consider that the conquest of the Country was begun and fully accomplished

Answer. In the sea ports they could not have resisted successfully. In the Interior they had a better chance, from having horses and a knowledge of the Country I consider the Conquest Commenced on the 7th of July 1846. I consider it was finally accomplished about the 10th or 15th January 1847 when Fremont and Andres Pico capitulated and treated together.

There was a provision in that treaty in favor of those who broke their parol, and also a guaranty that Citizens might live peaceably at their homes.

Re-examined by Claimant.

1st Question. In what purpose was Fremont in the Country with the troops which you have mentioned in your Answer to 2d Question by the Opposed Counsel Agent and what was the number of those troops?

Answer. Fremont was then in the country in the early part of 1846 at the head of an Exploring party of about 55 men.

2nd Question. What was the number of the Mexican force at Los Angeles about the 1st of August 1846 and who was their Commander

Answer. I think there were about 400 men. Jose Castro was in command of them

Thos. O Larkin

Subscribed and sworn to before me on this 14th day of December A.D. 1854

Peter Lott Commissioner &c.

Filed in Office Dec. 19 1854

Geo. Fisher Secy

Recorded in Ev. B. Vol 11 p. 82

Geo. Fisher Secy

Deposition of James Jackson

State of California }
County of Los Angeles }

Before J Tompson Bennett a Notary Public in and for the County of Los Angeles, personally appeared James Jackson a Negro, who being called as a witness by and on behalf of J J Warner Claimant of the Land named La Mesa la Camajai y Paloma in the County of San Diego, and numbered on the Docket of the said Board of Land Commissioners No 253 The introduction of the said witness is objected to by C. E. Thom on the ground of his being a Negro, but he being sworn on his declaration and truth as follows

Questions asked by Counsel of the Claimant.

Question No. 1 What is your name age and place of residence?

Answer. My name is James Jackson I am thirty seven years of age and I reside in the County of Los Angeles

Question No. 2. How long have you been a resident of California

Answer. I do not know exactly I think about thirteen years. I came to the County with Mr. Weaver of San Gorgonio and Mr. Dobson.

Question No. 3. Do you the Land called La Mesa be Longing to Soloman if you state what you know of its occupation and improvements by J. J. Warner the Claimant and at what time

Answer. I know the land above mentioned it is situated on the South side of the Valley of San Jose up in the Mountains. I know that it was occupied by J. J. Warner the Claimant, as I was in Charge of a Band of horses up there belonging to him, there was a corral there. I left an Indian there to take Care of the horses who was in the Employ of the Claimant to take Charge of the horses in My absence, he had a small Lachal there.

Question No. 4 In whose employment was you at the time you were taking Care of the horses?

Answer. I was in the Employ of J. J. Warner. I think I was there about Eighteen Months, and I left the Employ of J. J. Warner about the time that Gen Banks left California, and shortly after the departure of Gen Fremont from San Diego for Los Angeles. When I left the Employ of Mr. Warner and I joined the battalion of Gen Fremont having the agreement with Capt Marrie

Quest. No. 5. About how long had the horses been on the land of Claimant before you left the Employ of said Claimant

Answer. I think they had been there between Eight and Nine Months I always had one band there.

Questions asked by R. E. Thom formerly acting Land Agent

Question No. 1. By whom and at what was the fences, spoken of above, built

Answer. I have it built by the Indians, it was built of oak posts stuck in the ground, the corral would contain about One hundred horses, and was intended to shut up animals in the night to keep them from running away

Question. No. 2. Did you ever or not live upon the Land called La Mesa la Campiña y Palomar

Answer. I never lived there sometimes I went up and slept there

Question. No. 3. Was there or not any house upon the land?

Answer. No there was some grass shanties there, I don't recollect the year when I first saw the land, there was no cultivation there when I first knew it

Question 4 How do you know that the Land of which you have been speaking is called La Mesa la Campiña y Palomar

Answer. I have heard it called so by Mr. Warner and the Indians I never knew it by any other name. I heard it called so before I was on the land

Witness
G Tompson Burnett

James X his Jackson
mark

Sworn to and subscribed before me in the City of Los Angeles this 26th day of January A.D. 1855

Seal

G Tompson Burnett
Notary Public

I hereby certify that C. E. Thom was present when the foregoing testimony was taken

G Tompson Burnett
Notary Public

Filed in Office March 13. 1855
Geo. Fisher Clerk

Recorded in Ev. B Vol 11 p 575
Geo. Fisher Clerk

Deposition of Pio —

State of California }
County of Los Angeles }

Before me G. Tompson Bennett a Notary Public in and for the County of Los Angeles personally appeared Pio an Indian who being called as a witness in behalf of J. J. Warner claimant of the Land named La Mesa La Camajas y Paloma in the County of San Diego and numbered on the docket of the Board of Land Commissioners No 258 — The introduction of said witness is objected to by O. E. Shaw on the ground of his being an Indian but he being sworn on his oath deposeth and saith as follows.

Questions asked by Counsel for claimant

Question No. 1 What is your name age and place of residence?

Answer. My name is Pio I am twenty two years of age and I resside in the County of San Diego.

Question 2d. Do you know the land called la Mesa la Camajas y Paloma?

Answer. Yes I know the land and have known it for three years

Question No 3 What do you know about the Claimant's keeping horses there

Answer. I know that he had horses there, the horses were taken care of by Jose Lewis and Lucio both of them Indians

Question. No. 4. Did you see Genl. Kearny on his arrival at the Agua Caliente

Answer. Yes I did.

Question 5. Were the horses kept on the Mesa, kept there previous to the arrival of Genl Kearny

Answer. Yes they were

Question 6th. Did you know the land called Camajas y Paloma previous to the arrival of Genl Kearny at the Agua Caliente?

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Answer. Yes

Question. Do you know if there was a Corral or Jacal on the land at the time, and if so where abouts.

Answer. There was, they were both in the Cañada.

Questions asked by C E Thom formerly Acting U. S Land Agent.

Question. No 1 Did you hear what you have been stating from Somebody Else or do you know the facts of your Own knowledge

Answer. I know the facts from my Own knowledge and not from report

Question No. 2 In what year did you first know the Lands above spoken

Answer. I do not know

Question 3rd How often have you visited the Lands Called Mesa la Cama y Palomas?

Ans. I have visited it a great many times

Question. No. 4 Who was on the land at the time you visited it?

Answer. There was a Sonreau there and another named Francisco an Indian the Indian was from the Agua Caliente

Questions assumed by Counsel for Claimant

Question No 1. Have you known the Lands above spoken of since you were a Child.

Answer. Yes.

Question No 2. Who are Jose Lewis and Cecilio of whom you have spoken?

Answer. They are both dead I have them often then death.

Witness

G Simpson Burnell

Pro X his mark

Sworn to and subscribed before me this 18th day of January A.D. 1855

G Simpson Burnell
Notary Public

I hereby certify that C. E. Thom was present when the foregoing testimony was taken

G Simpson Burnell
Notary Public

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Filed in Office March 13. 1855
Geo. Fisher Secy

Recorded in Ev. B Vol 11 p 577
Geo. Fisher Secy

1. 39 1. S. D. K.

Espediente A
P. L. Exhibit nº 1.
to Depo. of John
Foster. Sep. 4. 1854.

1846.

Camafal y Palmeor, concedido á
Juan G. Warner.

nº 549.

2 Dk. Angeles. Junio 8 de 1846.

Vuelva este Espediente al interesado afin de que quede entendido que el Gobierno no puede concederle este terreno. Interin no acredite que Don José Antonio Pico dueño de estos sitios haya renunciado la accion esclusiva que le corresponde.

Pico.

Renuncio a favor del peticionario.
Sto Manguerita 31 de Julio 1846.

Antonio Pico.

Exmo. Sor. Gobernador.

Juan G. Warner, naturalizado y condo en este Departamento; ante V.E. presento y digo: que soy propietario del valle de San José que esta cubierto con bienes y siendo un paraje frontera, muy espuesto al entrado de los Indios barbaros y no teniendo seguridad por la defensa de los bienes en aquel paraje supeno á V.E. se sirva conceder me en propiedad unas mesas y cañadas en las Sierras de Conejal y Palomar para poder tener mi caballado mas cerrado y seguando de los Indios Barbaros colindante con el valle de San José por el Este con Santa Gabela por el Sur con la misma Cesarria por el Oeste y el Norte segun esplica el diseño que acompaño siendo de cuatro sitios de ganado mayor poco mas ó menos.

Por tanto Suplico á V.E. se sirva conceder me lo acompañando le el informe solicitado de la Prefectura de San Diego, admitiendo este en papel comun por falta del que corresponde. Jurando lo necesario.

Angeles. 3 de Junio de 1846.

Juan G. Warner.

3 Dk. Angeles. Agosto 1º de 1846.

Vista la peticion con que da principio este Espediente de los informes que obran a continuacion y de la renuncia que hace Dn José Antonio Pico: de este paraje en favor del interesado, con todo lo demas que se tuvo presente y ver convino, he venido en uso de mis facultades y de conformidad con la ley

de mis facultades y de conformidad con la ley

2. 141

de 18 de agosto de 1824 y reglamento de 21 de Noviembre de 1828 en concederá Don Juan Warner el paraje del Camajal y el Palomar compuestos de cuatro sitios de ganado mayor y linda al Este con el valle de San José con Santa Gabel por el Sur y con la Serranía por el Oeste y norte.

Pío Pico Gobernador Constitucional del Departamento de California así lo mandó decretó y firmó doy fee. Pío Pico.

José Matias Moreno. Srio. Int.

L.S.D.N.

Señor Sub Prefecto de este Distrito.

Juan S Warner, naturalizado, casado y Padre de familia en este Departamento ante V. S. como mas haya lugar en derecho presento y dijo: que soy en nombre de mi familia propietario del paraje conocido por el valle de San José que es frontera, sin pretensión de los enemigos Barbaros y ladrones á los quales por la distancia de la poblacion y en medio á ellos de los barbaros es muy expuesto y no teniendo proporciones para poner fuerzas suficientes por el asegurado de mi caballado y habiendo al lado Oeste del valle una Sierra que tiene mas pasturas y mesa proposito para tener mi caballada, mas seguro de los enemigos. Suplico á V. S. se sirva dar un informe para poder pedir en propiedad el indicado Terreno: cuyo terreno empieza en cuya piedras blancas en la cabezera del agua, conocido

San Diego. Mayo 20 de 1846.

Informe el Sor. Juez. 1º de este lugar si el paraje que solicita el naturalizado esto valdio y si pertenece a particular, Corporacion ó comunidad y hecha esta clase que sea, vuelva el Expediente a esta Sub Prefectura p.a los demas fines.

Argüello.

Juzg.do 1º y del 1º Partido del partido de S.n Diego. Mayo. 20 de 1846.

Atento al decreto que antecede del Sub. Prefecto de este Partido debo decir: Que se debe decir el año de 1836 en que estuve en el Valle de S. José el agua caliente no habiendo ningun

conocimiento de obras.
Días y tube por solo
el camino el pueblo
no puedo sumarse
porque en esta solicitud
hay tierras baldias y si pertenece á alguna comunidad
ó corporacion.
José A. S. Murillo,

San Diego. Mayo 21 de
1876.
Pase al Juez Segundo
de este lugar para
que en vista de la pueste
solicitud informe
lo que sepa sobre
su contenido.
Argüello.

En atencion á haberse
que hay parte de que
se me pide y informe
dice que segun esta
representacion de donde
se pide. Al rumbo que
les puede de unas pueblos
que estan al frente de
Aguaje del Carrizal
son lomerias baldias
y feas. Al valle de
S.n José, mas note hasta
onde puedas haber
llegado los linderos
de Sta Isabel propiedad

por el nombre de Coralito y siguiendo
al Oeste por legua y media ó otras
leguas y cambiando el Rumbo
por el Norte pasando el arroyo
que corre de San José á Pala en donde
para el camino que va á S. José
en palo ó poco mas abajo, queda
una Ranchería conocido por el nombre
de la Cola y siguiendo la misma
direccion ó posesiones al Oeste hasta
un paraje conocido por el nombre
del Palomar dentro de la Sierra de
mismo nombre y de ella bajando
hasta encontrar el terreno que
me fué concedido por el nombre del
Valle de San José, en un arroyo
que corre por Temalua, un palo
mas abajo de la Ranchería conocido
por el nombre del Cosalito y
ahenga de Camila cuyo terreno
~~cuyo~~ puede ser de uso ó mas
sitios aunque la mayor parte
es una Cerania enteramente
inutil, observando que todo
ó la mayor parte de este terreno
antes pertenecia á los parajes
de San José y Agua Caliente,
de los cuales soy como anteriormente dicho propietario y que es enteramente valdio.
Por tanto á V. S. suplico se
sirva dar me el informe corre
spondiente, pasando lo necesario
y admitiendole en papel comun
por falta del q. corresponde. S. Diego
a las 19 dias del mes de 1876.
Juan S. Warner.

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del Sor. Ortega para el uso de Sta Justina y Fermenia se halla valdio, mismo se hosta pide llegar los linderos del Sor. Lovito Zeñato de los Angeles en mi concepto no pasando de dichos linderos se le puede concederse al Interesado el cuanto puedo decir. Puerto de Sn Diego 21 de Mayo 1846.

Juan Mª Osuna.

Sub Prefectura del Partido de San Diego.

2 Siendo conforme el informe del Segundo Juez del Pto. con las noticias que ha adquerido esta Sub Prefectura y considerando que el interesado derecho a obtener la propiedad se le el presente para el uso que le convenga así lo el Sub Prefecto de este Partido lo decreto y firmé.

ydlh

José R. Argüello.

Here follows a map or plan.

g. 204.

Pio Pico Gobernador constitucional del Departamento de California.

Por cuanto Don Juan Warner Mejicano por naturalizacion ha pretendido para su beneficio personal y el de su familia el terreno conocido con el nombre de Comasal el Polomar, practicadas previamente las averiguaciones y diligencias consecuientes he venido por decreto de este dia en concederle el expresado terreno, usando de facultades con que estoy autorizado por el supremo gobierno a nombre de la Nacion Mejicana y de conformidad con la ley de 18 de Agosto de 1824 y reglamento de 21 de Noviembre de 1828 a reserva de la Exma. Asamblea Departamental y bajo las condiciones siguientes.

1ª Podra cercarlo sin perjudicar las travesias caminos y servidumbres: lo disfrutará libre y exclusivo destinandolo al uso ó cultivo que mas le convenga.

2ª Solicitará del Juez respectivo le dé la posesion

Juridica en virtud de este despacho por el cual se deslindaran los linderos con las respectivas medidas.

8.va El terreno de que se hace donacion es de Cuatro Sitios de ganado mayor y linda al Norte y al Oeste con la Serrania por el Este el valle de S. José y por el Sur con Santa Isabel segun esplica el diseño que cobra en el Espediente. El Juez que dicte la posecion con arreglo a ordenanza.

10-1DR.

En Consecuencia mando que teniendose por firme y valedero, se tome razon de el en el libro a que corresponde y se entregue al interesado para su resguardo y demas fines.

Dado en papel comun por no haber de sellado en la Ciudad de los Angeles a 1° de Agosto de mil ocho cientos cuarenta y seis. S.S.

J.M.M. Sro. Interino.

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

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

In testimony whereof I have hereunto signed my name officially and affixed my private Seal (not having a Seal of office) at the city of San Francisco Cal. the Twenty sixth day of November A.D. 1853.

Samuel D King Surv. Gl. Cal.

Filed in Office. Dec. 14th. 1853. Sev. Fisher. Secy.

Translation of Title of Especiena

To the Sub Prefect of this District

Juan J Alamo Naturalized, Mariner and head of a family in this Department in the most ample and legal manner, appear and say; that in the name of my family, I am proprietor of the tract of land known as Valley of San Jose - which is the frontier, without protection from Indian Enemies; and thieves, to whom owing to its distance from inhabitants and the immediate vecinity of the Wild Indians; it is really Exposed; and unable to maintain a sufficient force for the protection of my stock of horses and there being on the West of said Valley a mountain, which has some suitable places ("Potreros y Mesas") appropriate for keeping my horses with greater Security from Enemies - will you be pleased to give information to the End that I may solicit the proprietorship of the lands indicated, which land begins at some white rocks at the head of the Spring branches known as Canada and running West or South West one Leagues and a half or two leagues, thence changing the Course to the North crossing the Stream from San Jose to Pala at the place or a little below where the road from San Jose to Pala crosses near some Indian habitations ("Rancheria") known by the name of Wola and following the same Course, or a little more Westerly to the place known by the name of Paloma on the Mountain of the same name, and from thence descending to the

land granted to me by the name of Valle de San Jose at a Brook running towards Temecula a little below the Indian hamlet called Coronito or upper Ahuanga, which land may be five or more leagues (sitios) the greater part being mountainous and absolutely useless, remarking that all or the greater part of this land previously appertained to the "Indios" of land of San Jose and of Agua Caliente of which as before stated I am proprietor, and that it is entirely unoccupied - For the which you will please inform as requested - protesting as required - accepting this on common paper for want of the requisite Sun Diego -

May 19th. 1846 J J Warner

San Diego May 20th - 1846 -

The first Juezgo ("Juez 1°") of this place will inform if the tract of land solicited by the applicant is unoccupied, and if appertains to any individual, Corporation or Community, which done return this document to this office for further action -

Argüello

"First Court and of first Instance. (Juzgado 1° y de 1ª Instancia) of the District (partido) of San Diego.

May 20 - 1846 -

Agreeable to the order preceding of the Sub Prefect of this District (Partido) I must say that since the year 1837, in which I was in the Valley of San Jose and the Agua Caliente I have no knowledge of said tract of

Hence no knowledge of such lines of land, and then only along the principal roads, wherefore I am unable to give information of those solicitors are unoccupied or not, or if they appertain to any individual, Community or Corporation

Jose Antonio Estudillo

San Diego May 21 1846 –

Let this go to the second Juez ("Juez Segundo") of this place that in view of this petition, he may inform what he knows regarding the subject –

Argüello

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PAGE 47

In Compliance with the preceding Order in which information is required of me – I answer that according to what is stated in the petition that the line running West from some White rocks in front of the Springs ("Agua") of the Ladrones; shall Commence; the lands are unoccupied (Baldios) hills, and adjoin the Valley of San Jose, and North of the boundary lines of Santa Ysabel the property of Mr. Ortega – On the Course (Rumbo) of the Solomon Mountain until it descends into the Arroyo (Canada) which runs in the direction of San Luento and Temecula is unoccupied (Baldio) but I do not know the boundary lines of Mr. Antonio Serrano and the Agueles – but in my Opinion not Conflicting with the said lines, the lands may be Conceded to the Applicant. This being what I am able to inform –

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Port of San Diego
May 21st 1846 — Juan Mw. Osuna

Sub Prefecture of the District (partido)
of San Diego.

The information from the
second Juzgado (Juez segundo) of this Port
being in Conformity with information
otherwise acquired by this Office and
Considering that the appellant wishes
to obtain the property returns these docum
entes (Expedente) for that end such pur
poses as may be Convenient, and in
accordance I the Sub Prefect of this
District (partido) do decree and sign
Jose R Arguello

To His Excellency the Governor
Juan I Ulmer Natural
ized and married in this Department
appear before you and say that I
am proprietor of the Valley of San Jose
which is Occupied (habitada) with
property and being a frontier hace
greatly Exposed to the incursions of
Wild Indians, and unable to protect
and defend the property with Safety on
said tract; I request you to be pleased
to grant me in property Some Valle and
Valley lands ("Mesas and Canadas)
On the Mountains of Cumeyas and
Palomar, that I may be able to keep
my Stock of horses and Secure and
protected from the Wild Indians.
Bounded by the Valley of San Jose on
the East On the South by Santa Ysabel
and by the same Mountains on the West

tence by the same mountains on the West
ence North as appears by the accompanying
map (diseño) being four leagues, little
more or less — For the which I request
you to grant me the same — Accompanying
is the information proceed of the Prefect
of San Diego — Accepting this on common
paper, for want of that required, making
the necessary protests —

Angeles June 3d 1846 —

Juan J Warner

Angeles June 8. 1846 —

Return these documents (Especiente)
to the applicant, that he may know that
the Executive cannot grant this land
until certified that Mr. Jose Antonio
Pico owner of these lands (sitios) may
have renounced (renunciado) the right
exclusively belonging to him

Pico

I quit claim (renuncio) in favor of the
applicant —

Santa Margarita July 31 1846

Antonio Pico

Angeles August 1st 1846 —

In view of the petition with
which this document (Especiente) commen
ces, the information which appertains
and follows, and of the quit claim
("renuncio") made by Mr. Jose Antonio
Pico of this kind of land in favor of
the applicant, and all other matter
relative thereto — I have in exercise of
my powers and in conformity with
the Law of August 18 1824 and the
regulations of Nov. 21 1828 granted to

Mr. John Wilmer the tract of Land "Temajal", Containing four Square leagues (Sitios de ganado Mayor) having the Valley of San Jose on the East, Santa Ysabel on the South, on the West and North the Mountain –

Pio Pico Constitutional Governor of the Department of the California, Orders, decrees and Signs

Pio Pico

Jose Matias Moreno
Secretary Interim

Pio Pico Constitutional Governor of the Department of the California –

Whereas Don Juan Wilmer a Naturalized Mexican has for his personal benefit and that of his family applied for the lands known by the name of Temajal and the Palomar, the necessary Examinations, Enquiries and proceeds having been attended to – I have this day by decree granted him ("Considerado") the described Lands, Exercising the powers with which I am Clothed by the Supreme Government In the name of the Mexican Nation and in Conformity with the Law of August 18 – 1824, and regulations of Nov. 21st 1828, Subject to the Legislature of the Department and under the following Conditions –

1st He may Enclose the Same but with out prejudice to Roads and Servitudes he will Enjoy the free and Exclusive use of the Same, dedicating it to such use or Cultivation as he may determine.

2d. He will solicit of the respective Officer that he may give him juridical possession by virtue of this document (despacho) by which the boundary lines will be defined with the respective monuments.

3d. The land given is four square leagues ("cuatro sitios de ganado Mayor") and on the North and West adjoins the Mountain on the East the Valley of San Jose, and on the South Santa Ysabel as is shown by the map ("diseño") which is attached and goes with the documents ("Especiales") The Officer who may give the possession will cause it measured agreeable to the Ordinance. In consequence I order that holding the present title firm and true note of it will be made in the Book to which it corresponds, and cause it to be delivered to the grantee (interesado) for his security and other Ends (demas fines).

Given on this common paper for the want of sealed, in the City of Angeles August 1st 1846 –

Pio Pico

Jose Maria Moreno
Secretary ad Interim

Notice is taken of this Superior Title (despacho) in the proper Book
Moreno

Title in Office December 6th 1853
Geo. Fisher Secy

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5. 53

Pio Pico Gobernador constitucional del Departamento de California.

Por cuanto Dn Juan Warner Mejicano por naturalizacion ha pretendido para su beneficio personal y de su familia el terreno conocido con el nombre de Camajal y el Palomar, practicadas previamente las averiguaciones y diligencias conservientes he venido por decreto de este dia en concederle el espresado terreno, usando de las facultades con que estoy autorizado por el Supremo Gobierno a nombre de la nacion Mejicana y de conformidad con la ley de 18 de agosto de 1824, Reglamento de 21 de Noviembre de 182 a reserva de la Exma. Asamblea Departamental y bajo las condiciones siguientes.

Exhibit No. 1 A. F. (Grant.) to depo. of S. E. Argüello.

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1a Podra cercarlo sin perjudicar las travesias caminos y servidumbres, lo disfrutará libre y exclusivamente destinando lo al uso y cultivo que mas le convenga.

2a Solicitara del Juez respectivo le dé la posesion Jurídica en virtud de este despacho por el cual se deslindar - caran los linderos con las respectivas mojoneras.

3a El terreno de que se hace donacion es de cuatro sitios de ganado mayor y linda al Norte y al Oeste con la Serrania por el Este con el valle de San José y por el Sur con Santa Gertrudes segun esplica el dibujo que obra en el Espediente. El Juez que tiene la posesion lo hará medir con arreglo á ordenanza. - En consecuencia mando que tomandose el presente titulo por primer y valedero se tome razon de él en el libro a que corresponde y se entregue al interesado para su resguardo y demas fines. = Dado en este papel comun por no haber de sellado. En los Angeles a primero de Agosto de mil ocho cientos cuarenta y seis. = Pio Pico.

José Matthias Moreno. Sr Secretario = Queda tomada razon de este Superior despacho en el libro respectivo Moreno.

Filed in Office. May 31st 1853. J. Fisher. Secy.

5-5

Translation of Exhibit No. A. F. annexed to depo. of S. E. Arguello

Pio Pico Constitutional governor of the Department of the Californias—

Whereas Don. Juan Warner a naturalized Mexican has for his personal benefit and that of his family applied for the Lands known by the name of Camajal and Palomar, the necessary Examinations Enquiries and proceeds having been attended to, I have this day by decree granted him ("Concedasele") the described lands Exercising the powers with which I am clothed by the Supreme government—

In the name of the Mexican Nation and in Conformity with law of August 18. 1824 and regulations of Nov. 21. 1828 subject to the Legislature of the Department and under the following Conditions.

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1st He may enclose the same, but without prejudice to roads and Servitudes, he will Enjoy the free and Exclusive use of the same, destining it to such use or Cultivation as he may determine

2d He will solicit of the respective Officer that he may give him juridical possession by virtue of this document (despacho) by which the boundary lines will be defined, with the respective Monuments.

3d The land given is four square leagues ("Cuatro sitios de ganado Mayor"), and on the North and West adjoins the Mountain— On the East the Valley of San Jose' and on the South Santa

Ypalel as is shown by the Map (diseno) which is attached and goes with the documents ("Expediente").

The officer who may give the posepion will have it measured agreeable to ordinance - In Consequence I order that holding the present titlo firm and valid, note of it will be made in the Book to which it Corresponds, and cause it to be delivered to the grantee (interesado) for his security and other Ends (demas fines)

Given On this Common paper for want of sealed in the City of Angeles August 1st 1846.

Pio Pico

Jose Matias Moreno

Secretary Interim

Notice is taken of this superior titlo (despacho) in the proper Book

Moreno

I George Fisher Secretary to the Board of U. S Land Commissioners do hereby certify the foregoing to be a true and correct translation of "Exhibit No. A. F." annexed to deposition of S. E Arguello. filed in this Case.

Witness my hand this December 13th. 1853

Geo. Fisher Secy

Filed in Office Dec. 13th. 1853

Geo. Fisher Secy

5-7

Affidavit of J. J. Warner

J. J. Warner
vs
The United States

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Personally appeared before me Alpheus Felch United States Commissioner for the Settlement of Land Claims in California, J. J. Warner Claimant in Case No. 253 before the Board of Commissioners for the Settlement of Private Land Claims in the State of California, who being duly sworn deposes and says. That although he made application to the Authorities of California early in the year 1846 for a tract of Land known as Camajai y Palomar, yet owing to delays which occurred in the process, as will appear by the Expediente filed in the case. Title did not issue from the Executive until August 1st 1846 that year deponent received the said title in the City of Los Angeles, that he immediately returned to his residence at San Jose del Valle in the jurisdiction of San Diego and that on his arrival at his said residence he was informed that the Town of San Diego was occupied by the troops or forces of the United States, and from that time there has been no recognized Mexican Authorities from whom he could obtain the duplicate papers of the said tract of Land as provided for in the Title issued to deponent

J. J. Warner

Subscribed and sworn to before me this 14th day of December 1853

Alpheus Felch
Commissioner

Filed in Office Dec. 15th 1853
Geo. Fisher
Secy

58

5-9

Before the U S Board of
Land Commissioners
J. J. Warner
vs
The United States

Stipulation

It is hereby stipulated and agreed that the Claimant may take the deposition of two Witnesses upon the point of occupation to be used before said Board, and the said deposition shall be Considered wherever and not used in said Case in any subsequent proceeding on appeal - The said depositions shall be taken before the County Clerk of Los Angeles County on five days notice to C. E. Thom Esq. and the said notice shall be of no Effect unless said Thom Consents to act as atty -
The said deposition shall be taken subject to all legal Exceptions and this Stipulation shall only be Considered as permitting the testimony to be taken before another than an officer of the said Board

J. H. McKune
U. S. Law Agent

Filed in Office March 13 - 1855
Geo Fisher Secy

Recorded in Journal Vol 4 page 235
Geo. Fisher Secy

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Opinion of Board by Com. Thompson

J. J. Warner vs The United States

Rancho Paloma 35 Sq. Leagues in San Diego County

This claim purports to be founded on a grant made by Governor Pio Pico on the 1st of August 1846.

It has been decided by this Commission that the power of the Mexican Authorities in California to make grants of Land terminated with the raising of the American Flag at Monterey on the 7th July 1846. This grant having been made subsequent to that period is consequently invalid and must therefore be rejected.

Filed in Office July 17. 1855
Geo. Fisher Secy

358 SD
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Decree

J. J. Warner vs The United States

In this case on hearing the proofs 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.

R Aug Thompson
S. B. Ferrill
Commrs

Filed in Office July 17th. 1855
Geo. Fisher Secy

62

And it appearing to the Satisfaction of the 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 decision 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 District Court of the United States ~~for~~ in ~~the~~ ~~Territory~~ of 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 Sixty two — pages, numbered from 1 to 62, 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. 253 on the Docket of the said Board, wherein J. J. Warner is — the Claimant against the United States, for the place known by the name of "Camajal y Palomar" —

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

Geo: Fisher
Sec.

358

S. DISTRICT COURT,

Southern District of California.

No. 58.

THE UNITED STATES,

vs.

358

J. D. Warner.

"Comajalcito"

TRANSCRIPT OF THE RECORD

FROM THE

BOARD OF U. S. LAND COMMISSIONERS,

In Case No. 25

Filed, Aug 9th — 185

W. E. Carr
Clk.

358

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

J. J. Warner — Appellant
vs
The United States — Appellee

Case No 358
Transcript No 253

Camajal y Palomar

Appeal from the decision of the Board of Commissioners to ascertain and settle the private land claims in the State of California taken on the 5th day of Jany. 1856 by the said Board having filed with the Clerk of the above Court a certified Transcript of their proceedings and decision and of the papers and evidence upon which the same are founded in said Case being No 253 upon the Docket of said Board

Notice is hereby given that the Appellant in the above entitled Case and claimant before said Board for a tract of land called "Camajal y Palomar" and situated in the Southern District of California filed before said Board on the 31st of May 1852 and being on the Docket No 253 will prosecute the appeal herein from the final decision of said Board entered July 17th 1855 against said Claimant & Appellant

J. J. Warner

No 358.

U. S. Dist Court
South Dist Cal.

J. J. Warner
appellant
vs
The United States
appellee

Notice of appeal

Filed Feby 13th 1856
C. E. Carr
Clk

For the defendants

In the U. States Dist Court
for the Southern Dist of California

J. J. Warner
Appellant

vs

The U. States

No 358
Carnafal vs
Paloma

It is hereby stipulated
by and between the parties that
the above case may at the pleasure
hereof of the Court by the U. States Dist
atty for said Dist be submitted
to the Court for final determination
upon the condition that the parties
hereto have leave to file briefs before
the 30th day of said Dist Court
at the City of Los Angeles

Los Angeles
July 23rd 1858

J. J. Warner
Appellant

P. Ord Attys

No 358.

In Dist Court
Lincoln Dist Cala

J. B. Karsner
vs appellee

U. States

Stipulation & Submit
to Case

Filed July 23rd 1888

C. Sims Clk
J. H. Coleman
Dep

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In the District Court of the Southern District of California, on appeal from the U.S. Board of Land Commissioners for California.

L. J. Warner, claimant for Camajal & Potrero
vs
The United States

The Defendant by P. Ord, Attorney, comes into Court and denys generally and specifically each and every allegation of the Plaintiff contained in his petition filed in said action.

Wherefore Defendant prays that the claim of said Petitioner shall be dismissed with costs, and such other and further relief as may be necessary and proper in the premises.

P. Ord
U.S. D. Atty
By E J Kewen
Actg Atty

No. 358.

U.S. District Court of the
Southn Dist. of California

J. J. Warner, claimant &c
vs.
The United States.

Answer

Filed this 30th March
AD 1858 C Sims Clk
J D Harlowan
Dep

P. Ord.
U.S. Dist. Atty

J. J. Warner
Claimant for
Camajal y Paloman
vs
The United States

In the District Court for the Southern District of California. On appeal from the U. S. Board of Land Commissioners for California

To the Honorable Isaac S. K. Ogier Judge of the U. S. District Court for the Southern District of California

Your petitioner J. J. Warner respectfully represents to your Honor that he is the Claimant for a certain tract of land called "Camajal y Paloman" situate in the County of San Diego, within the said southern District of California, granted by Governor Pio Pico to your petitioner on the 1st day of August A.D. 1846 which said tract of land is bounded on the East by the "Valle de San José" on the south by the lands of "Santa Isabel" on the West and north by Mountains That your petitioner duly presented his said Claim for Confirmation to the Board of Commissioners organized under the act of Congress approved March 3rd 1851 entitled "An Act to ascertain and settle the private land Claims in the State of California" and that on the day of said Commissioners rendered a decree rejecting the said Claim and that an appeal has been duly taken from the decision of the said Commissioners to the said District Court for the Southern District as will appear by the transcript of the record of said land Commission which is herewith filed. Your petitioner prays your Honor to review the decision of said Commissioners and reverse the same and that a decree may be entered confirming the title of the said tract of land to him and for all such further orders and proceedings as to your Honor may seem just

are proper in the premises

J. J. Warner

Claimant

No 358

D S Warner
appl
vs
U States

Petition of Claim

Filed March 6th
AD 1838

Spinks
Clk

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

THE PRESIDENT OF THE UNITED STATES,

TO

P. Ord U. S. Dist Atty

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GREETING:

TAKE NOTICE, That a Petition, a copy of which is herewith served upon you, has been filed against ~~you, and each of you~~ the United States, in the District Court of the United States, in and for the Southern District of California, on the 6th day of March in the year of our Lord, one thousand eight hundred and fifty-eight, at the City and County of Los Angeles, in said District, by

J. J. Warner praying said Court to review the decision of the U. S. Board of Commissioners, rejecting his claim to the tract of land called Cuyamaca y Palomar situate in the County of San Diego in the Southern District of California

and that you, ~~and each of you~~, are required to appear at said Court, in said City, within ten days after the service hereof, if served on you within the County of Los Angeles, and within twenty days if served on ~~you in the County of San Diego or San Bernardino~~, and within forty days if served on you in any other County of ~~said State~~, exclusive of the day of service, and answer said petition, or that judgment by default will be taken against you, and each of you, and the prayer of the said petitioner will be granted, with costs.

In witness whereof, I have hereunto set my hand, and affixed the Seal of the said Court, this 12th day of March, in the year of our Lord, one thousand eight hundred and fifty-eight, at Los Angeles aforesaid.

C. Sims Clerk.

J. H. Colingan Dep

No. 358

UNITED STATES OF AMERICA,

SOUTHERN DISTRICT OF CALIFORNIA,

U. S. DISTRICT COURT.

S. J. Warner

Vs.

The U. States

SUMMONS.

Filed on return this 23 day of March 1858
Lewis Clk
J. W. Coleman
Dep

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I served this Summons, along with the proper copy of the Petition, upon E. J. C. Kewen acting U. S. District Attorney at Los Angeles, in the Southern District of California, on the 24 day of March, A. D. 185 8.

Sworn to and subscribed before me,

Clerk.

Filmer C. Pierce Marshal.

In the District Court of the U. S
in and for the Southern District
of the State of California

J. J. Warner
vs
United States } On appeal from the
Board of Land Commissioners

The Claim in this Case is founded upon a grant made by Pio Pico, then Governor of the Californias, dated the 1st of August 1846.

There is no dispute as to the execution of the grant, nor the genuineness of the signatures of the Governor and secretary, ~~assume~~ as well as those of Jose Antonio Pico, Jose Ramon Argüello, the Sub-Prefect, Jose ~~Antello~~ Antonio Estudillo, the First Alcalde, and Juan Maria Osuna ~~and~~ the 2d Alcalde, and J. J. Warner the Claimant whether any of those signatures appear upon any of the papers connected with this Case - therefore the proof of such signatures must be conceded by this Court.

The Board of Commissioners rejected the Claim upon the sole grounds, that the grant ~~being~~

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Morrow - p 24

or title being actually made on the first day of August 1846, and after the ~~first~~ 7th day of July of that year, that the power of the Governor had ceased, upon the said 7th of July in consequence of the raising of the American flag at Monterey at that time: as alleged by the same Board of Commissioners - We therefore propose to discuss that point only before this Court --

It appears from the transcript (page 45) - that on the 19th of May 1846 the Claimant made application by petition to the Sub-Prefect of the District of San Diego for a report concerning the land then asked for and now claimed, in order that he might submit such report to the Governor with his petition for the land.

It is evident that the object of the Claimant in procuring this Report before presenting his petition to the Governor was to facilitate the proceedings. This Report must have been had before the grant could have been made, and if the petition had been presented to the Governor without such Report

the Government have, under the Mexican laws and regulations, to refund such petition and demanded a Report from that same office, or some other Competent to make such Report.

This Sub prefect then refund this petition to the First Alcalde, as required by the then regulations, who on the 20th of May 1846, the following day, reports the same back to the Sub-Prefect stating that his knowledge and information on the subject was insufficient to furnish the requisite information.

On the 21st of the same month the petition is again refund to the 2d Alcalde, who ~~reports~~ on the same day reports that the lands asked for is unoccupied and may be conceded to the Petitioner. Upon the return of the Petition and Report of this Alcalde to the Prefect he made the following order

"Sub-Prefecture of the District of San Diego"

"The information from the 2d Judge of this Port being in conformity

"with information otherwise required
"by this office, and considering that the
"applicant wishes to obtain the property,
"the returns these documents for that, and
"such purposes as may be convenient
"and in accordance & the said Sub-
"Prefect of this District do decree and
"sign" "Jose R. Argüello"

(Trans expt 46. 47. 48)

On the 3d day of June 1846, ~~the claim~~ ~~and the~~ ~~same~~ the Claimant then presented his petition asking for this land, to the said Governor, accompanied with the former petition to the said Prefect, the Report of the said Alcalde, and the aforesaid decree of the said Prefect. These papers were so presented to the Governor at the City of Los Angeles which was then the Capital of California.

Up to this time the Claimant had done all the laws and regulations required of him to obtain the grant of the land asked for, and had done all those things with the utmost diligence -

By the laws and usages of Mexico, on the presentation of the petition of the Claimant with the other papers, to the Governor, he was obliged to make the grant for the land asked for, unless there were some legal objections to the making such grant, such as that the Claimant was not competent to take by such laws, or that the lands had before been granted, or were such as ~~land~~ could not be granted, none of which objections, nor any other, existed. ~~an~~ Therefore if no such objections existed, the Governor must make the grant. The Claimant had created an equity in his favor, which gave him an equitable right to have the legal title to such lands, and by the laws then existing he could have compelled such title.

It clearly appears ~~On the 8th of June 1846~~ by the Report of the Alcalde and the decree of the Prefect that the Claimant is competent to take the lands, and that they are ungranted. Therefore no objections existed against the Conveyance of the lands. These facts were acquired

and stated as the law directs, and was certified to as a judicial act which was conclusive upon the Governor and no extra judicial facts ~~that he~~ ~~may~~ of which he may have possessed could ~~not~~ affect those which were proved to him in the legal manner, nor interfere or overthrow the legal and vested rights of the Claimant which he ~~was~~ had a right to demand from the Governor.

On the 8th of June 1846 ~~the Claimant~~ it appears the Governor returned the petition and the other papers accompanying the same to the Claimant with the following order or decree.

"Return these documents
" to the applicant that he may know
" that the executive cannot grant this
" land until certified that Jose Antonio
" Pico owner of these lands may have
" renounced the right exclusively be-
" longing to him". "Pico"

There were no facts before the Governor upon which to base this order, and it was wholly extra-judicial.

and without any authority whatever. The report of the proper officers showed conclusively that the land was at the time ungranted, and such as could and should have been granted to the claimant without any further objections. But the claimant received the papers again, and procured the required certificate from the said Antonio Pico, and the following Release was made and executed by the said Antonio,

"I quit claim in favor of the applicant"

"Santa Margarita July 30th 1846"

"Antonio Pico"

(Manuscript page 48. 49.)

which certificate and Release were again returned to the Governor.

The applicant at this point had done all that was required of him, and all that was necessary to entitle him to a grant for the land. He had removed all objections which had been made or suggested by the Governor or any other person. It cannot be questioned that if no change in the Government had been made

Persons were in possession of the lands with settlements as early as 1840 — See Moreno's Testimony

that the Claimant would have been entitled to his grant, and that the Governor would not have had any right or discretion on his part to refuse it. The estate had become vested in the applicant, and it only required the execution of the grant on the part of the Governor, as the agent of the Government, as the evidence of the ownership of the land -

On the first day of August 1846 the Governor made a decree in favor of the petitioner and ordered the title to issue (Manuscript pages 49. 50. 51 - and accordingly the title was issued and dated on that day -

The documentary evidence and the testimony submitted in support of the Claim were so full and complete, that the only grounds for its rejection by the Board of Land Commissioners was founded upon the fact that the title issued on the first day of August, and that all grants issued after the 7th day of July 1846 were invalid, because the flag

of the United States had on that day been raised at Monterey ~~on that day~~ without taking into consideration any of the equities in favor of the Claimant, and his right to a title arising out of those equities.

The preliminary steps to obtain the grant, as well as the caution observed by the Governor in granting the lands, and the time which intervened between the application and the issuance of the title appear perfectly satisfactory as to the legality of the grant, and the objection to its confirmation seems to be entirely confined to the fact that it was issued after the 7th of July 1846.

It therefore becomes necessary to examine this part of the case, and see if from the evidence in the case, the equities arising out of the facts, and the state of the country, especially in that part in which this land lays, there be any force in this objection.

The Capital of California at this time, and for a long time before, was at the City of Los Angeles, and the then Govern

nor of California resided at that place as such Capital. At the date of the grant the executive, legislative military authorities were all at this Capital in the usual and ordinary discharge of their duties (Depositions of Robbins & Larkin) There were no hostile forces near that place than Monterey, about 400 miles from Los Angeles. Therefore the subject of the grant being land, it was in the actual and peaceable possession of the Mexican Government. The laws and officers of Government had the undisputed and undisturbed possession, jurisdiction and authority over the land, and all other property in that part of the Territory.

It appears from the testimony of Thos O Larkin (Transcript p. 24) that during the months of July & August 1846, he resided at Monterey, was Consul and also ~~the~~ by appointment of the President the Confidential agent for Upper California. Being such Confidential agent he had frequent Consultations with the

Stoat for the 5 or 6 days preceding the 7th of July upon the subject of the taking possession ~~of the Country~~ of and occupying that place. He says he was with Stoat all the day of the 6th of July, and assisted him in making a proclamation to be published on the taking of that town, which was so published. Larkin also sent Couriers to the towns and stations north of Monterey giving notice of the raising of the United States flag at Monterey, and also wrote to Fremont who was then north of Monterey, at Stoats request, to raise volunteers. Monterey was not the Capital at that time, nor had been for several years before that time. It was at that time an unprotected and unguaranteed Port, where there were neither Civil or Military officers of the Mexican Government except a few Custom House officers. The flag was accordingly raised on the 7th of July 1846.

The war which preceded the treaty of February 1848, and which gave occasion to it was commenced in May 1846, there was not any formal declaration set-

ting forth the purpose of the war, nor was there at any time previous to the cession of the grant in question any Proclamation by the U. S. Government that the acquisition of California was an object of the war. As hostilities commenced in the East, and more than 2000 miles from California, without any declaration of war, so was the flag raised at Monterey, on the 7th of July following without any order from ~~any order~~ Washington or from any other source, but was so raised without any knowledge of the existence of any war. Sloat since on the 6th of July to Lackin, this Confidential Agent, that he perfered being censured ~~for doing~~ at Washington for doing too much rather than for doing too little, and that he would raise the Flag and take the place

Up to this point there is no evidence of any war or disturbance, or of any hostile forces or Military preparations within any part of California, except that Sloat was at Monterey with a small Government Vessel, nor is there any

evidence for what Sloat was at Monterey, and it is a fair presumption that he was ~~there~~ accidentally there, and for no purpose connected with any war that may have then existed between the U. S. and Mexico. But clearly if he was sent by his Government to raise any flag at that point, or for any other purpose connected with any war, the United States in this case has failed to show it.

Larkin says that a proclamation was issued once letters written at Sloats request and sent to Col Fremont to raise volunteers. From the testimony of Larkin this writing to Fremont to raise volunteers, appears to be the first steps taken to carry into effect the determination then first conceived by Sloat to raise this flag and take the Country. It no where appears, but the inference is otherwise, that either Sloat or Larkin considered the act of raising the flag the taking of the Country, but as a proceeding preliminary to such purpose, if there should happen to be an existing

war, or hostilities on the part of the U.S.; and the only inference to be drawn from this request or letter sent to Fremont to raise Volunteers is that there should be a preparation and readiness to take the Country by these Volunteers if there should be necessity for it, and not that the Country had been taken and conquered by the raising a flag by a man who had no direction or authority to do the act, at an unimportant and ~~[illegible]~~ almost an unguarded point within the Country. ~~And Lockie~~ It further appears that nothing further was done by Sloat, who was relieved by Stockton about the 20th of July. Stockton, as soon as he had completed arrangements for the defence of Monterey, proceeded by water to the Southern Coast, arriving at San Pedro, a main landing place about 25 miles from Los Angeles, in the first week of August 1846, at which the Mexican authorities were at that time. Lockie accompanied Stockton to ~~that the Country was not taken at this time or to command~~ this place, at his special request and because he was acquainted with the Country,

and the authorities, and was also holding a confidential position with the Government of the U.S.

That the country was not taken at this time or so considered either by Stockton or Larkin is very apparent; for Larkin says that the Mexican authorities were in Los Angeles the capital, and that Stockton who was then only the successor in command of the Government vessel, received recognized and entered into negotiations with commissions sent by the Mexican authorities at the capital for the surrender of the country, after his arrival in San Pedro in the first part of August. The negotiations proved a failure in consequence of a condition required by Stockton that the Mexican officers should both lower the Mexican flag and raise that of the U.S. which they refused to do. After this failure and about the 10th of August Larkin was sent by Stockton with a flag of truce to Genl Castro with a letter proposing to him a renewal of the negotiations and to withdraw the objectionable condition which had previously broken off the negotiations. The

The testimony of

Larkin shows that he was the confidential agent of the U.S. Government, and it clearly appears that he was so recognized as such by Stockton and Stout; and it conclusively appears that so far from the country being in the possession or occupation by any military or other force of the U.S. at this time, or on the 7th of July 1846, ~~there was~~ ~~was no attempt~~ there was no attempt to take such possession or occupation until after Stockton had arrived at San Pedro in the four part of August. The fact clearly appears that Stockton was unwilling as late as the 10th of August to accept from the Mexican authorities the surrender of California. And even the efforts of Larkin, who was the confidential agent of the ~~Resident~~ U.S. Government, proved unavailing to induce Stockton to accept of the surrender of the country as late as the 8th of August, because there was not within his, Stockton's, knowledge sufficient grounds to authorize him to take possession of the country

Therefore then we insist that if there were no equities in this case in favor of the claimant, and such as would

entitle him to a confirmation of his grant, irrespective of its dates, yet that the Governor had full power and right to grant the lands asked for at the date of such grant. The proper Mexican authorities were at that time in undisputed and undisturbed possession of that part of the Country, exercising all the different functions of the government, without even a knowledge, so far as it appears in this case, of the existence of any hostilities on the part of the U. S. Government. The mere raising a flag at an unimportant and obscure point, 400 miles from the Capital of the Country, by a person who not only had no authority for such an act, but was wholly ignorant of the existence of any hostilities on the part of the U. S. Government, is not such a constructive possession so as to affect the right of the Claimant. Cannot be insisted upon nor take that from this single act, unauthorized as it was, can, constructively, be extended as a Conquest of the Country and possession and occupancy to divest the citizens of the Country of their acquired equitable rights and property.

Vattel ~~says~~ / Chap. 4 - Sec 51. 52. 53 page 315 / 318

lays down the law respecting the declaration of war to be that the nation making ~~war~~ the war must declare it in order to fix the time of its commencement for her own benefit, and that of her own subjects. In the case at bar there having been no declaration of war made by the U. S, she cannot claim the possession or occupation of a thing belonging to Mexico until she, the U. S., obtained the actual possession. No constructive acquisition can be set up as having taken place from the commencement of the war, nor from any particular time or act until the thing claimed was in the actual possession of the U. S. and Mexico deprived of the possession and jurisdiction over it.

Vattel page 386. 387 -

The title to the public real property within the limits of the State of California became vested in

the U. S. by virtue of the treaty of peace between the U. S. and Mexico on the 2d of February 1848. The title acquired to real property in war must be confirmed by a treaty of peace before it can be considered as completely valid.

Wheaton International Law 469.

That all grants of real property made by a belligerent, while in the military occupation of the enemies country must be expressly confirmed by the treaty to give them any validity, unless the cession of the territory either expressly or by the silent operation of the treaty extinguishes the title of the former sovereign.

Wheaton ~~Vattel~~ 469 - 612 -

~~This same author~~ Vattel lays down the rule respecting the acquisition of property by war that it is only by the treaty of peace ~~on~~ the return submission and extinction of the State to which ~~to which~~ those conquered towns and provinces belonged, that

the acquisition is completed, and the property becomes stable and perfect, and he says; immovable possessions, lands, towns and provinces, become the property of the enemy who makes himself master of them.

Vattel 386 —

Therefore, then, as the making himself master of immovable possessions and real property is an essential requisite to give any semblance of proprietorship to constitute an usufructuary right, or title to such property, the corollary of the rule must be true, that the nation in which the right and title was vested does not lose the right and title until divested by treaty, or by the ~~actual~~ loss of actual possession

The war between Mexico and the U. S., one of the consequences of which was the loss of California by the former, and its acquisition by the latter, was commenced without any formal declaration. On the 13th of May 1846 Congress adopted measures somewhat

in detail for the successful prosecution to a speedy termination of a war, found to exist between the two Countries. On the same day the President made a proclamation of the war. On the 13th of June, one month later, another act supplementary to that of the 13th of May, was passed, providing for carrying on the war.

9 Statutes at Large 9-10 & appendix 999.

In neither of these acts nor in the proclamation of the President is there any reference to any right to, or demand made for the occupation or possession of California, or any part of the Territory of Mexico, or of any declaration or pretence that the acquisition of territory was an object of the war. No notice is given to Mexico or to other nations for the purpose of restraining or preventing Mexico from alienating any of her property.

There having been no claim set up by the U. S to the real property

belonging to Mexico in the present State of California, it follows that Mexico continued to hold the actual possession and unqualified right to dispose of any of her property, until she lost the possession of such property, ~~for~~ And supposing the land in question was disposed of by the Mexican Government while it was in her possession, and the title passed to the present Claimant while so in her actual possession, it must, in accordance to the laws and well settled rules of Conquest be held to be ~~held~~ a valid grant.

There is nothing in the treaty of peace fixing the date when Mexico lost, and the U. S ~~acquired~~ obtained Military occupation and possession of California.

We therefore insist that

1st That although the raising the flag at Monterey on the 7th of July 1846, should constructively be considered the taking of the whole country (which we deny) yet the claimant had, previous to that, acquired the equitable estate in the lands so as to entitle him to the grant.

2°- That the unreaching of the flag at Montery was without any authority, and did not amount, under any law or usage, to the taking of the Country, ~~either~~ and that the then Governor would have had a right to have granted the land on the first day of August 1846, even upon a petition presented to him after the 7th of July.

If this Court should have doubts upon the points raised in this Case, it should confirm the grant in favor of the Claimant, and give him the benefit of those doubts. Upon such doubtful points the U. S. should appeal to the Court above -

S. F. Reynolds
Attorney & Counsel
for Claimant

No 358

U.S. District Court

J. J. Warner
vs
United States

Brief

Filed this 11th
Sept 1860
C. Sims

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" 19 do of John Forster
" 20 do of J. E. Freeman

Occupation
" 9 do. of John Forster
10 do. of John D. Wheeler
23 do. of Jesus Moreno

State of the Country and Position of the Mexican Officers at the time of the making of the grant or issuance of title

Page 9 Deposition of Jose M. Cobarrubias
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No. 358

J. E. Warner
appelt

vs

The U. States

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Filed this 12th
Sept 1860

C. Lewis
Clk

In the District Court of the
Southern District of California

J. J. Warner appellt
vs
The United States

No 358

This cause coming on to be heard on appeal from the decision of the United States Board of Land Commissioners to ascertain and settle the private land claims in the State of California under the act of Congress approved March 3d 1851. On a transcript of the decision and proceedings of said Board and the papers and evidence upon which said decision was founded and the evidence taken & filed in this Court since said appeal. And it appearing to the Court that the said transcript and notice of appeal have been duly filed according to law and counsel for the respective parties having been heard and the same being fully considered by the Court It is ordered adjudged and decreed that the decision of the said Board of Land Commissioners be affirmed and the said claim of the appellant be held as invalid and the same is hereby rejected

Given in open Court this 14th day of September 1860

Ogden
U S Dist Judge
for the Dist of Cal

No 358

J J Warner appl
vs
The United States appl

Decree

Filed this 14th
Sept 1860
C. Sims
CR

In the United States
Dist Court in and
for the Southern Dist
of Calif

J. J. Warner
Appellant
vs
The United States
Appellee
} No. 358

"El Camahal y Palomar"

Dec Term 1863

On motion of appellant
in the above entitled cause it is hereby
ordered that upon the filing in this
court good and sufficient bonds for such
costs as may accrue either in this or the U.S.
Supreme Court of the U.S. to be approved by the Clerk of this Court
It is hereby
ordered adjudged and decreed that
the said Appellant be allowed
to take an appeal

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

#358
J. J. Warner
vs.
The United States

Filed this 22nd day
of March 1864
Jno. O. Wheeler
Clerk
by Geo. B. Van Ness
Dep.

In the United States Dist Court
in and for the Southern Dist
of Calⁿ

J. J. Warner
Appellant
vs
The United States } No 358

Before Hon. F. M. Haight U. S. Dist. Judge

Now comes appellant
in the above entitled cause
and moves this Hon Court that
an order be granted allowing
and appeal in the above entitled
cause from the decision here-
-to fore rendered by this court to wit
on the 13 of Sept 1860 to the
U. S. Supreme Court

#358
J. J. Warner
Vs.
The United States

Motion for an order allowing appeal

Filed this 22nd day of March 1864
Jno. O. Wheeler
Clerk
by Geo. B. Van Ness
Dep.