

CASE NO.

378

SOUTHERN DISTRICT

CAJON DE MUSCUPIABE GRANT

JUAN BAN DINI

CLAIMANT

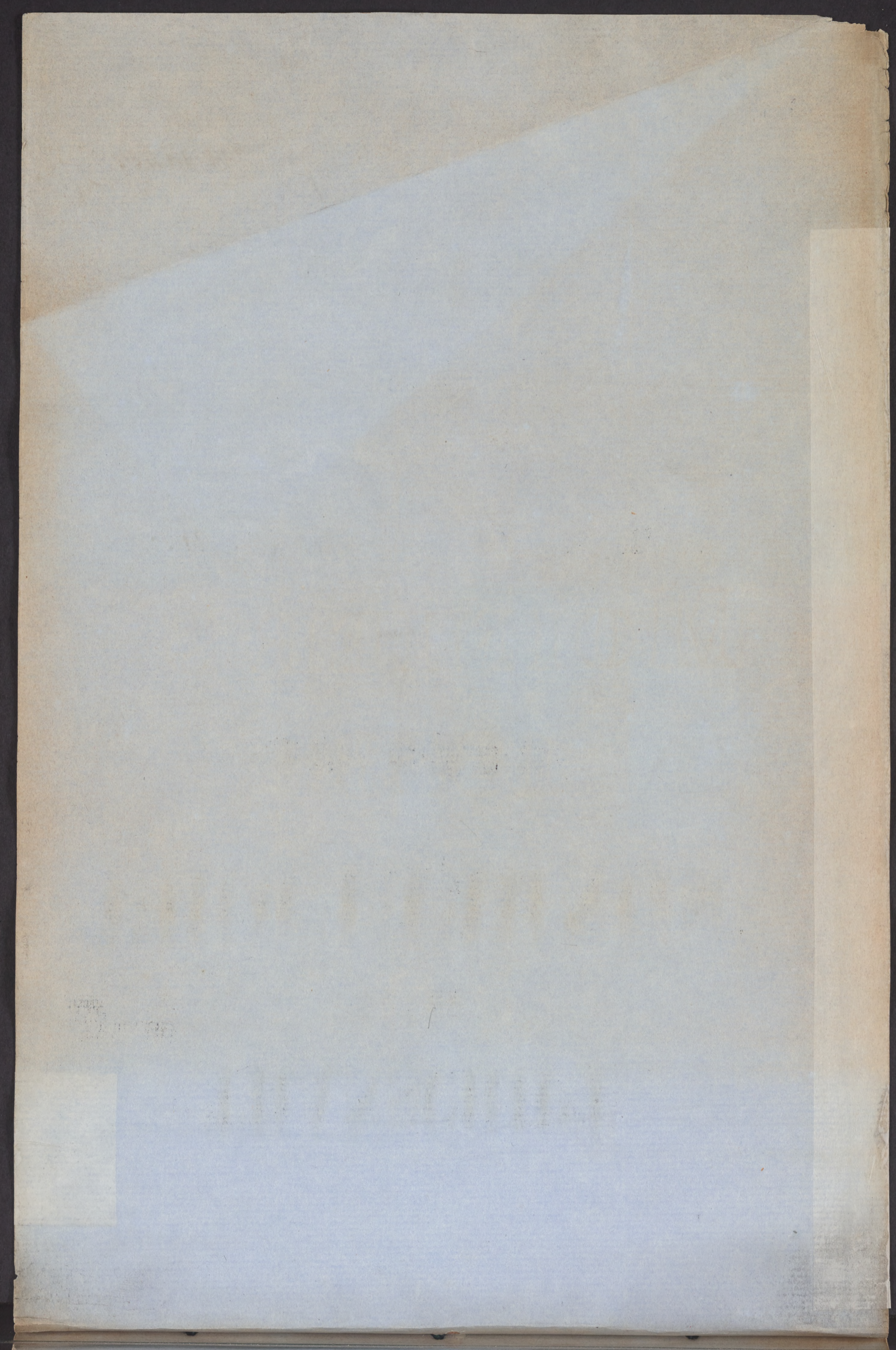
420

LAND CASE 378 SD pgs. 22

Permanently  
PLOWERS BOARD  
SAY TO THE

380

Dep



# TRANSCRIPT

378 SD

PAGE 1

OF THE

# PROCEEDINGS

IN CASE

NO. 380.

*Juan Bandisni*

CLAIMANT

VS.

THE UNITED STATES, DEFENDANT,

FOR THE PLACE NAMED

*Cajon de Mouscupiabe.*

THE LITTLE BROWN

THE LITTLE BROWN

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SEVENTEEN

THE LITTLE BROWN

THE LITTLE BROWN

THE LITTLE BROWN

THE LITTLE BROWN

Office of the Board of Commissioners,

To ascertain and settle the Private Land Claims

IN THE STATE OF CALIFORNIA.

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PAGE 2

Be it Remembered, that on this Eighth day of October, 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 Juan Bandini, ~~~~~  
~~~~~ for the Place named  
~~~~~ "Cajon de Murcupiale," ~~~~~  
was presented, and ordered to be filed and docketed with No. 380 and is as follows, to wit.

(Vide page 3 of this Transcript.)

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

Los Angeles, October 19<sup>th</sup> 1852.  
In case no. 380, Juan Bandini for the place named "Cajon de Murcupiale," the deposition of Abel Stearns, a witness in behalf of the claimant, taken before Commissioner Nelson Hall, with documents marked A. N. W. 1 annexed thereto, was filed.

(Vide page 4 of this Transcript.)

San Francisco, October 31<sup>st</sup> 1853.  
Case no. 380 was submitted on briefs and taken under advisement by the Board.

San Francisco, Jan'y 8<sup>th</sup> 1856.  
In the same case Commissioner S. B. Farwell delivered the Opinion of the Board rejecting the claim;  
(Vide page 17 of this Transcript.)

and the following order was made, to wit;  
(Vide page 19 of this Transcript.)





3  
To The Honorable

The United States Commissioners  
for ascertaining and settling land claims in  
the State of California

Your Petitioner Juan Bandini resi-  
dent of the County of San Diego, State of  
California respectfully represents:

That he is lessee of a tract of land  
called the Cañon de Muscupiebe, or los  
Mexicanos for the purpose of cutting &  
taking the timber therefrom.

That the exclusive right to the  
timber of said tract for the term  
of thirty years was granted to him,  
by Juan B. Alvarado as Governor of  
the Californias, and as such having ample  
powers in the premises, by article of  
lease bearing date the 18<sup>th</sup> of December  
A.D. 1839

Said land is described as follows; con-  
taining the mouth of the "Cañon de Mus-  
cupiebe" and the mountain adjoining  
thereto and the pinery thereon, where  
there is a large grassy plain the  
circuit of which forms the boundary  
of the tract designated for the cutting  
of timber situated in the County of  
Los Angeles, said tract of land has  
not been surveyed by the Surveyor  
General of the United States for California  
There is no known interfering  
claim, and its conditions have been  
fulfilled.

Your Petitioner relies upon  
the following documentary evidence,  
filed with the Secretary of Your Hon

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Board to support his claim:  
A copy of the Expediente and Article of  
lease granted by said Governor, the translation  
of which accompanies it.

He will rely upon such further doc-  
umentary evidence and oral testimony  
as may serve to support his claim.

And he prays that he may be confirmed  
in said lease by the Superior wisdom  
and justice of your Honorable Board.

And as in duty bound &c.  
Oct 7, 1852,

Juan Bardini by  
Scott & Essinger  
his Attorneys.

Filed in Office Oct 8<sup>th</sup> 1852.  
Geo. Fisher Sec

Office of the U.S. Land Commission  
Los Angeles Oct 19, 1852.

Deposition  
of  
Abel Stearns  
On this day before me Hiland Heale  
one of the Commissioners for ascertaining  
and settling private Land Claims in  
California came Abel Stearns a witness  
produced in behalf of the Claimant  
Juan Bardini whose petition is No 380  
on the docket, and was duly sworn  
his evidence being given in English

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

In answer to questions by the Counsel  
for the Claimant the witness testified  
as follows:

5-  
My name is Abel Stearns, my age fifty four years & I reside in Los Angeles I have been a resident in California for the last twenty three years.

I am acquainted with the handwriting and signatures of Juan Bardini, Manuel Simen, Francisco C. Arce, Tiburcio Tapia, Narciso Botello, Andrew Machado, Ignacio Coronel, Juanacio Abila, Juan B. Vega, Juan B. Alvarado, Juan B. Leonardo & Prefecto Hugo Reid.

A paper is now shown me purporting to be a grant by Governor Alvarado on the 18. of December 1839. to Juan Bardini of the right of cutting wood at a place called Muscupiabi, & papers connected with the same.

The signatures of the said several persons appear on said paper and some of them in several places.

I have no doubt their signatures wherever they appear are genuine, & that the signature Alvarado, is that of Gov<sup>r</sup> Juan B. Alvarado, said paper is hereto annexed and marked to 1. N. 76. I.

I know that Bardini opened a road to the place designated in the grant I was at the place in 1844 & he had taken considerable lumber from there.

He had a number of men at work there at that time.

The place is in the County of Los Angeles, and in the vicinity of San Bernardino.

I think Bernardino Godin is in

charge of the place for Bandini's.

In Answer to questions by the Land Agent  
the witness says Bandini does not cut  
wood on the land at present.

I think he has cut no wood there  
since 1846. though I think other persons  
cut there by his permission in 1847 or  
1848, or both years.

He used the land for cutting timber  
up to the times before stated, from  
the date of the grant.

Abel Stearns  
 sworn & subscribed  
 Before me

William Hall  
 Comr.

Filed in Office Oct 19, 1852.  
 Geo. Fisher Sec.

(Span 200c follows)

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Examined by  
El Cidre Juan Bandini and

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Exmo. Sor.

Monterrey. 16. de Oct.<sup>bre</sup>  
de 1839.

Suporase el Sor. Pjeto  
del Segundo Distrito  
si el terreno donde se  
tiene hacer el interior  
en esta instancia el corte  
de Madena pertenece  
a propiedad de algun  
particular, corporacion  
o Pueblo, con todo lo  
demas que enea con  
eseute a Instruar la  
materia.

Exacuado que  
sea vuelta el Expediente  
al Gobierno para  
su resolucio. El Sr.  
D<sup>o</sup> Manuel Jimeno  
Casarin primer vocal  
propietario de la  
Exmo. Junta del  
Departam<sup>to</sup> de las  
Californias en ejercicio  
del Gobierno del  
mismo arbitramento  
obedi y firmo de  
que doy fe.

Manuel Jimeno.

Fran<sup>co</sup> C. Arce.

Oficial Diviceno.

El Ciudad<sup>o</sup> Juan Bandini ante  
V. E. con todo el respeto y consideracion  
devida me presento y digo: que  
necesitavolo de algunas maderas  
pa fabrica de casas y ademas para  
la tablazon necesaria a ellas y otras  
utiles de mi beneficio personal y  
especulativo me propongo abrir  
un camino en un cajon o cañada  
en la Sierra que corre a espaldas  
de la Ex. Misio de S. Gabriel en  
luga cañada esta proxima al  
cajon de Munciapiate o de los  
Mejicanos que llaman Atuaolos  
serca del paraje llamado 1<sup>o</sup>  
Bernardino: y como pa dicha  
empresa necesito enagar grandes  
gastos: pa el fin de indoleguar  
las y del aprovechamiento de mi  
Industria pto al Gob<sup>o</sup> la cedula  
pr treinta años a lo nuevo para  
lograr el beneficio q. deseo con  
la reparacion de los gastos que  
al efecto se originen: dejando lo  
despues al aprovechamiento publico.  
Por lo que: A. V. E. pto y suplico  
me conceda este derecho pr escrito  
an de justicia, protestando lo  
necesario y espenando se sirva  
v. E. admitir lo presente en el  
papel comun pr fatto del delib<sup>o</sup>.  
En Gabriel ybro. 24 de 1839.  
Juan Bandini.

Doc. n<sup>o</sup> H. H.  
annexed to the Depo.  
of Abel Stearns  
taken before Comr.  
H. Hall.

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Angelos. Noviembre 3. de 1839.

Pase este Expediente al G<sup>o</sup>. Ayuntamiento.

de esta ciudad para que informe sobre el contenido  
en esta instancia que el interesado expuso firmemente  
cual de los dos Cajones que refiere a el señalado para  
el corte de Madera a que se continúe, con todo lo  
demás que sirva para sustentar la materia conforme  
se previene en el Superior decreto que antecede.

Japúa. Narciso Botetto. Trío.

Ang: nov: 3 de 1839.

Dada cuenta al Y. Ayuntamiento en sesión de  
hoy, mandado pase esta Comisión de sitios baldíos para que  
en virtud del decreto que antecede informe su informe  
y haga que el Sr. Barandini cumpla con el mismo  
decreto.

Antonio Machado. P<sup>te</sup>

Yg<sup>o</sup> Consul. Trío.

S<sup>o</sup> Gabriel y Obre solo 1839.

El Cajón a que me refiero en mi anterior instancia  
es el de Mucupiate y que también se conoce con el  
nombre de Cajón de las Mejicanas, no pertenece  
a persona alguna.

Juan Barandini.

Yhe. Ayuntamiento.

La Comisión de terrenos baldíos a reconocido el  
terreno o Cajón que se refiere en el presente Sup<sup>te</sup>  
y dice que no pertenece a Corporación ni particular  
alguno el mencionado Cajón, y como el interesado  
expuso por su nombre arriba, la Comisión es de  
opinión que le conceda el permiso para adquirir  
su trabajo si así le creyó conveniente: este es lo que  
que da a virtud del Superior decreto marginal.

Angeles. Noviembre 9. de 1839.

Juanavio Abila.

Juan C. Vezar.

Angeles 9. de 1839.

Se dio cuenta al Y. Ayuntamiento con el dictamen  
que antecede y fue aprobado, mandado vuelva  
igualmente esto a la Superioridad. = lo tachado.  
= no vale.

Ant: Machado. Yg<sup>o</sup> Consuel.

Trío.

Exmo. Sr. Gobernador.

La Prefectura de este distrito impuesta del presente Expediente e informes que anteceden dice que es de accederse a la solicitud del interesado, si así fuere del Superior agrado de V. E. pues en ello resulta un bien común.  
Ang. Noviembre 14 de 1839.

Narciso Boletto. Srío.

Monterrey. Diciembre 18 de 1839.

Vista la peticion con que dá principio este expediente y las razones conque se funda a ello por cuanto a no haber inconveniente que impida la concesion del privilegio pretendido: he recibido por el presente en acceder a dicha pretension con la esclusiva de los treinta años referidos a beneficio del ciudadano Juan Baudini para que pueda efectuar el corte de las maderas que existen en el Cajon de Muslapitabe (a) las Mexicano para su beneficio propio sin que en este periodo de tiempo pueda ninguna autoridad ni particular impedirle el logro de este beneficio de su industria. Vuelva este expediente al Sr. Prefecto del 4º Distrito para que por medio de uno de los Jueces de la Ciudad de los Angeles disponga, dar posesion real y efectiva al interesado Sr. Baudini estableciendo los linderos correspondientes, cuyos actos se hanan constar a continuacion de este expediente con el que se dará cuenta al Gob.<sup>no</sup> entregandose por el exp.  
Sr. Prefecto al interesado el despacho correspondiente que le servira de resguardo.

Abrorado. Manuel Jimeno

Srío del despacho.

Angels. Enero 15 de 1840.

Remítase el presente Expediente al Sr. Juan 2º de Pán de esta Ciudad D.<sup>o</sup> Juan B.<sup>ta</sup> Leandry para que en vista del Superior decreto que antecede prosiga a darle posesion real y efectiva al

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10  
Ciudadano Don Juan Burrolini del punto que se  
refiere para verificar lote de Madero con especificación  
de linderos conforme se previene

Japú. Narciso Poletto. Frío.

En cumplimiento del superior decreto que antecede  
pase con mis testigos de asistencia a la Sierra que  
solicita el interesado y estando en ella se le dio posesión  
jurisdica por el lito boca del Cajon de Muscupiate  
la Sierra y pinal que en ella expresa donde hay el  
principio una meta trancosa: cuyos parajes  
forman los linderos del lote de Madero. Guardando  
por tal acno permitiendo el interesado para el goce  
del privilegio respectivo.

Ang? Diciembre de 1850.

Juan B. Leñidos.

ana. Jy. Coronel. ana. Perfecto Hugo. Revd.

Filed in Office. Oct. 19<sup>th</sup> 1852.

Geo. Fisher. Secy.



11  
His Excellency the Governor,

The Citizen Juan Bordini before  
Y.E. with all due respect and due  
consideration presents himself & says:

That having need of some Boards  
for the building of a house, and further  
of the planing necessary to it, and for  
other utilities for his personal benefit  
and speculation, proposes to open  
a road into a cajon or canada of  
the mountain which extends to the  
back parts of the Ex. Mission of San  
Gabriel, and which Canada is next  
to the Cajon of Misicubi or of the  
Mexicans as they call it, situated  
near to the place called San Bernardino,  
and as for said enterprise it is neces-  
sary to lay out great expenses for the  
purpose of repaying them and of  
securing advantages to compensate  
his industry.

He asks of the Governor the  
exclusive right for thirty years at  
least, to enjoy the benefit which  
he desires, for the realization of the  
expenses which that subject will  
create leaving it afterwards to the  
public use;

Wherefore he supplicates of Y.E. to  
grant him such right, as he believes it  
will be just, declaring it necessary,  
and hoping that Y.E. will be pleased  
to admit the present on common  
paper for want of the sealed.

San Gabriel Feby 24. 1839.

(endorsed on the same.)

Juan Bordini

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"B"

Translation of  
A

Monterey Oct 10. 1839.

Inform the Pr Prefect, of the second District, whether the land where the party interested asks to cut timbers in this petition, belongs to the property of any individual Corporation or town with whatever else he believes necessary to illustrate the matter.

This being accomplished let this Expediente be returned to the Govern-ment for its decision.

The Senor Don Manuel Casarin, first Proprietary member of the N. E. Assembly of the Department of the Californias in exercise of the Government of the same;

Thus I order it, decree, and sign it  
I attest,

Manuel Jimenez  
Francisco C. Arce  
Official Primero

Angeles November 2<sup>nd</sup> 1839.

Pass this Expediente to the Illustrious City Council of this City that they may report upon the contents of this petition requiring that the party interested shall clearly express which of the two Cajons he refers to is the one design-ated for the cutting of timbers, which he engages to do, with whatever else may serve to illustrate the matter in conformity with what precedes in the foregoing Superior Decree  
Fapin

Narciso Botello  
Secretary.

Angeles Nov 2. 1839

Account having been given to the Illustris City Council in session of to day, I order this to be passed to the Committee on unoccupied lands, that in virtue of the preceding decree, they may complete their report, and may cause that the Sr Bandini shall comply with the same decree.

Antonio Machado  
President.

J.º Coronel  
Secretary.

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San Gabriel Nov 5. 1839.

The Cajon to which I referred in my former petition is that of the "Muscupiabe" and which is also known by the name of Cajon de las Mexicanos; it does not appertain to any person.  
Juan Bandini

Illustris City Council:

The Committee on unoccupied lands have examined the land or Cajon which is referred to in the present Expediente, and state:

That it does not belong to any Corporation nor individual, to wit: the aforesaid Cajon, and as the party interested declares by his name above, the Committee are of opinion that the permission to acquire the working of it may be granted, if it is believed proper.

This is the report they give in virtue

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of the Superior (Marginal decree.  
Angeles Nov 9. 1839,  
Juanario Abila

Juan C. Vyas.

Angeles Nov 9. 1839.

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Account of the foregoing  
decision was given to the City Council  
and it was approved, I likewise order  
this to be returned to His Excellency.

Antonio Machado

Jr. Colonel  
Secretary.

His Excellency the Governor.

The Prefecture of this District  
having been advised of the present Expediente,  
and the foregoing reports, believes  
that the petition of the party interested  
can be granted, if it should be of  
the Superior pleasure of G. E. and  
that by it will result a common  
good.

Angeles November 10<sup>th</sup> 1839  
Narciso Botello.

Señor Tiburcio Lapin.

Monterey December 18. 1839

Having seen the petition with which  
this Expediente commences, and the  
reports relating thereto, and whereas  
no inconvenience arises to prevent the  
grant of the privilege asked for, I have  
concluded by the present to accede to  
the petition with the exclusive right  
for the thirty years referred to

& the benefit of the Citizen Juan Bandini.

to the benefit of the Citizen Juan Bardini,  
in order that he may effect the cutting  
of the timbers which exists in the Cajon  
of the Muscapabe / or / the Mexicans, for  
his own proper use, and that within  
this period of time no authority nor  
individual shall prevent him to enjoy  
this benefit of his industry,

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Return this Expediente to the Sr  
Prefect of the 2<sup>nd</sup> District, in order  
that by means of the Judges of the City  
of Los Angeles, real and effective possession  
may be given to the aforesaid  
Sr Bardini, establishing the correspon-  
ding boundaries, which acts shall appear  
at the end of this Expediente, of which  
account shall be given to the Governor,  
the corresponding Dispatch being  
delivered by the aforesaid Sr Prefect  
to the party interested, which shall  
serve for his protection,

Alvarado

Martín Jimeno  
Secy of Dispatch,

Angeles January 15. 1840,  
Remit the present Expediente to the  
Sr D<sup>o</sup> Judge of the Peace of this City  
Don Juan Bta Leandry, that by  
virtue of the preceding Superior Decree,  
he may proceed to give real and  
effective possession to the Citizen Juan  
Bardini of the point referred to for  
verifying the cutting of timbers, with  
specification of the boundaries agreeably  
to what precedes,  
Narciso Botello Secy. Tapia.

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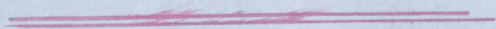
In fulfillment of the preceding Superior  
Decree, I passed with my assistant  
witnesses to the mountain which the party  
interested prays for; and there being  
judicial possession was given; by the  
east, the mouth of the Cañon of Muscupiabe  
the mountain & the pinery which is con-  
tained in it, where there is the com-  
mencement of a grazing plain, the  
places form the boundaries of the Corte  
de Mederas; leaving by such act the  
party interested in possession for the  
enjoyment of the proper privilege

Angeles October 4, 1840,  
Juan B. Landry

Asst.  
Lg. Colonel Perfecto Asst.  
Henry Reid

Filed in Office Oct 8, 1852,  
G. Fisher Sec

TYPE  
SD



Spanish of Juan Blandini  
Boeris by  
claim for a right to

Opinion of Juan Bandini  
Board by  
Com. Service

vs  
The United States

Claim for a right to  
cut timber on a place  
called "Cajon de  
Mesquitas" in the  
County of San Diego

The petitioner in this case has offered in evidence a document executed by Juan Maria B. Alvarado on the 18th day of December 1839 granting him the Executive right to cut timber on the above named place for the term of thirty years from the date thereof in consideration of the said Bandini making a road to the place

The Act of Congress creating this Board limits its jurisdiction to the settlement of Private Land Claims in California and the Eighth Section providing "That each and every person claiming lands in California by right or title derived from the Spanish or Mexican Governments shall present the same to the Commissioners when sitting as a Board, together with their declarations of title" &c

The Act of Congress executed by us is not intended to confer jurisdiction on this Board to decide any cases that do not reach an interest in the land itself

The right given by the Commission in this case in our opinion is more easement, and not such an interest in the land as was intended by Congress to be accepted by this Board and therefore

think this case is one over which this  
Commissar has no jurisdiction.

But of the rights of the  
Claimant whatever they may be, are  
sufficiently protected by the treaty  
between the Government and that  
of Mexico, and which can be enforced  
through the medium of the proper Courts  
having jurisdiction over the subject  
matter, provided any incursions shall  
be attempted shall be attempted of his  
rights.

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For the reasons  
think this claim not a valid one  
and a decree will be entered accordingly  
Respect

Filed in office January 8. 1855  
Geo. Fisher

Secy



Decree

Franco Pancini }  
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.

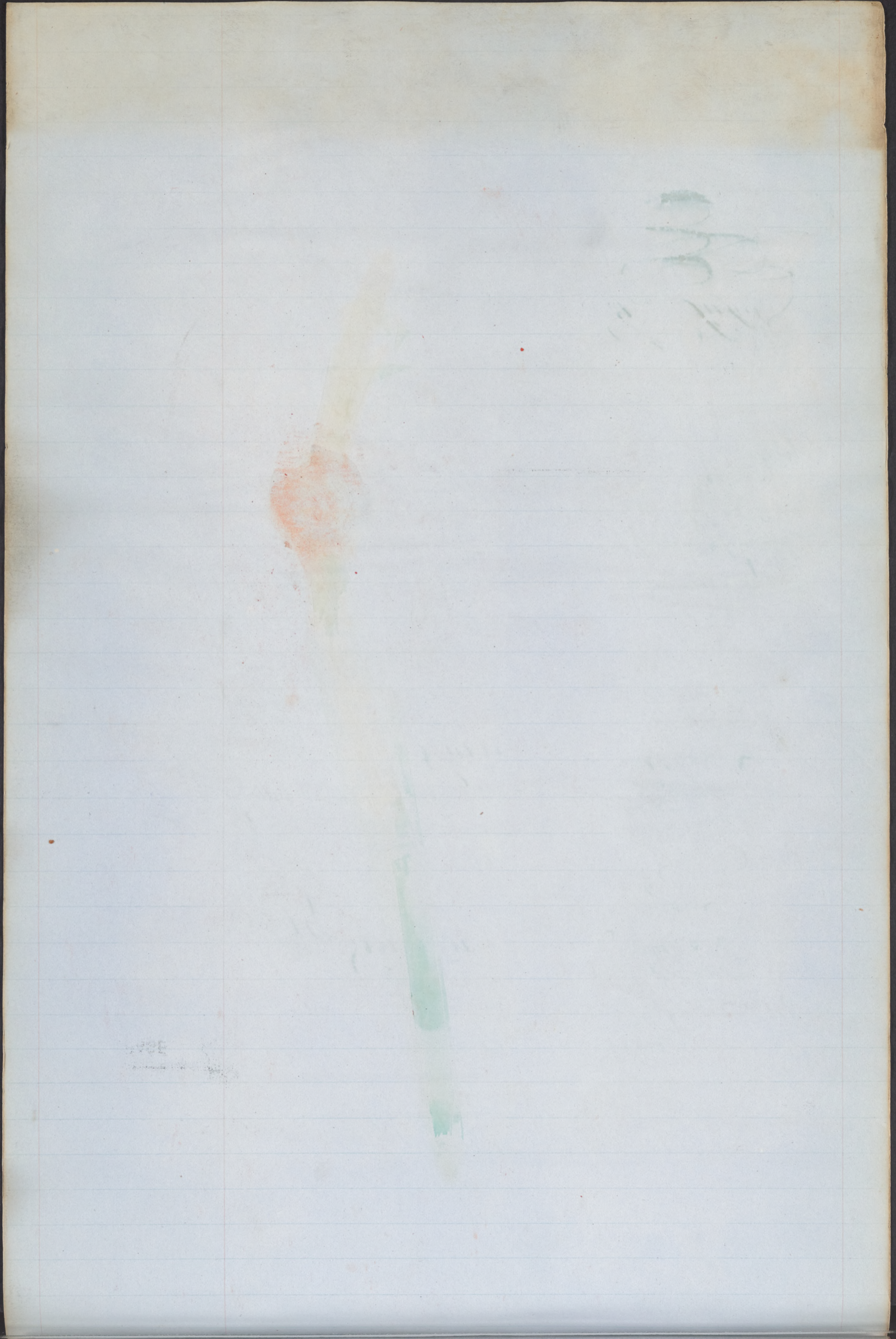
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Alpheus Felch }  
R. Aug. Thompson }  
S. B. Fawcett }

Filed in Office June 8. 1855

Geo. Fisher Secy

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 and one transcript shall be filed with the Clerk of the United States District Court for the Southern Federal District and the other be transmitted to the Attorney General of the United States.



Office of the Board of Commissioners,

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

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I, *George Fisher* Secretary to  
Board of Commissioners to ascertain and settle the Private  
Land Claims in the State of California, do hereby certify the  
foregoing *Annex* pages, numbered from  
1 to 19, both inclusive, to contain a true, correct and full Tran-  
script of the Record of the Proceedings and of the Decision of the  
said Board, of the Documentary Evidence and of the Testimony  
of the Witnesses, upon which the same is founded, on file in this  
Office, in Case No. 380 on the Docket of the said Board,  
wherein

*Juan Bandini* is

the Claimant against the United States, for the place known by  
the name of *Cajon de Mouscupiabe*

In Testimony Whereof, I hereunto set my hand  
and affix my private Seal (not having a Seal  
of Office) at San Francisco, California, this  
*Twenty sixth* day of *January*  
A. D. 1856, and of the Independence of the  
United States of America the ~~seventy~~ *eighty* ~~eighth~~

*Geo. Fisher*

378  
U. S. DISTRICT COURT,  
*Santhum* District of California.

No. 378.

THE UNITED STATES,

vs. 378

*Juan Bandini.*

*"Cajon de Mascapiabe"*

TRANSCRIPT OF THE RECORD  
FROM THE  
BOARD OF U. S. LAND COMMISSIONERS.

In Case No. *378*

Filed, *Feb 6<sup>th</sup>* 1856

*J. E. Carr.*  
CLERK.

378

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

vs.  
Hon. J. S. K. Ogden Judge

Juan Bandini

Appellant

N. 378.

vs.

The United States

vs. N. 380.

Appellee

On Motion of P. M. United States Attorney  
for the Southern District of California; and  
in showing to the Court that the appellant  
in the above entitled cause has failed  
to file a notice with the clerk <sup>of this Court</sup> of his  
intention to prosecute the appeal in said  
cause within the time allowed by law;  
It is ordered by the Court that the  
appeal in said cause be finally dismissed.

P. M.

Attesty

Dec. 22. 1836.

No 378

No 378

U.S. District Court  
for Southern Dist. Cal.

Juan Bandini  
appellant

<sup>vs</sup>  
The United States  
appellee

Motion & order for  
Dismissal

Filed this 22<sup>nd</sup> December

A.D. 1850

C. J. Clark  
clerk  
of the Court  
C. J. Clark